

COVENANT TREATY

AND

LAND AND TENURE

BEING

A COLLECTION OF

LAW CONCERNING

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1706-1707-1708
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1712-1713-1714
1715-1716-1717
1718-1719-1720
1721-1722-1723
1724-1725-1726
1727-1728-1729
1730-1731-1732
1733-1734-1735
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1739-1740-1741
1742-1743-1744
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1748-1749-1750
1751-1752-1753
1754-1755-1756
1757-1758-1759
1760-1761-1762
1763-1764-1765
1766-1767-1768
1769-1770-1771
1772-1773-1774
1775-1776-1777
1778-1779-1780
1781-1782-1783
1784-1785-1786
1787-1788-1789
1790-1791-1792
1793-1794-1795
1796-1797-1798
1799-1800-1801
1802-1803-1804
1805-1806-1807
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1811-1812-1813
1814-1815-1816
1817-1818-1819
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1832-1833-1834
1835-1836-1837
1838-1839-1840
1841-1842-1843
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1847-1848-1849
1850-1851-1852
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1856-1857-1858
1859-1860-1861
1862-1863-1864
1865-1866-1867
1868-1869-1870
1871-1872-1873
1874-1875-1876
1877-1878-1879
1880-1881-1882
1883-1884-1885
1886-1887-1888
1889-1890-1891
1892-1893-1894
1895-1896-1897
1898-1899-1900
1901-1902-1903
1904-1905-1906
1907-1908-1909
1910-1911-1912
1913-1914-1915
1916-1917-1918
1919-1920-1921
1922-1923-1924
1925-1926-1927
1928-1929-1930
1931-1932-1933
1934-1935-1936
1937-1938-1939
1940-1941-1942
1943-1944-1945
1946-1947-1948
1949-1950-1951
1952-1953-1954
1955-1956-1957
1958-1959-1960
1961-1962-1963
1964-1965-1966
1967-1968-1969
1970-1971-1972
1973-1974-1975
1976-1977-1978
1979-1980-1981
1982-1983-1984
1985-1986-1987
1988-1989-1990
1991-1992-1993
1994-1995-1996
1997-1998-1999
2000-2001-2002
2003-2004-2005
2006-2007-2008
2009-2010-2011
2012-2013-2014
2015-2016-2017
2018-2019-2020
2021-2022-2023
2024-2025-2026
2027-2028-2029
2030-2031-2032
2033-2034-2035
2036-2037-2038
2039-2040-2041
2042-2043-2044
2045-2046-2047
2048-2049-2050
2051-2052-2053
2054-2055-2056
2057-2058-2059
2060-2061-2062
2063-2064-2065
2066-2067-2068
2069-2070-2071
2072-2073-2074
2075-2076-2077
2078-2079-2080
2081-2082-2083
2084-2085-2086
2087-2088-2089
2090-2091-2092
2093-2094-2095
2096-2097-2098
2099-2100-2101
2102-2103-2104
2105-2106-2107
2108-2109-2110
2111-2112-2113
2114-2115-2116
2117-2118-2119
2120-2121-2122
2123-2124-2125
2126-2127-2128
2129-2130-2131
2132-2133-2134
2135-2136-2137
2138-2139-2140
2141-2142-2143
2144-2145-2146
2147-2148-2149
2150-2151-2152
2153-2154-2155
2156-2157-2158
2159-2160-2161
2162-2163-2164
2165-2166-2167
2168-2169-2170
2171-2172-2173
2174-2175-2176
2177-2178-2179
2180-2181-2182
2183-2184-2185
2186-2187-2188
2189-2190-2191
2192-2193-2194
2195-2196-2197
2198-2199-2200
2201-2202-2203
2204-2205-2206
2207-2208-2209
2210-2211-2212
2213-2214-2215
2216-2217-2218
2219-2220-2221
2222-2223-2224
2225-2226-2227
2228-2229-2230
2231-2232-2233
2234-2235-2236
2237-2238-2239
2240-2241-2242
2243-2244-2245
2246-2247-2248
2249-2250-2251
2252-2253-2254
2255-2256-2257
2258-2259-2260
2261-2262-2263
2264-2265-2266
2267-2268-2269
2270-2271-2272
2273-2274-2275
2276-2277-2278
2279-2280-2281
2282-2283-2284
2285-2286-2287
2288-2289-2290
2291-2292-2293
2294-2295-2296
2297-2298-2299
2300-2301-2302
2303-2304-2305
2306-2307-2308
2309-2310-2311
2312-2313-2314
2315-2316-2317
2318-2319-2320
2321-2322-2323
2324-2325-2326
2327-2328-2329
2330-2331-2332
2333-2334-2335
2336-2337-2338
2339-2340-2341
2342-2343-2344
2345-2346-2347
2348-2349-2350
2351-2352-2353
2354-2355-2356
2357-2358-2359
2360-2361-2362
2363-2364-2365
2366-2367-2368
2369-2370-2371
2372-2373-2374
2375-2376-2377
2378-2379-2380
2381-2382-2383
2384-2385-2386
2387-2388-2389
2390-2391-2392
2393-2394-2395
2396-2397-2398
2399-2400-2401
2402-2403-2404
2405-2406-2407
2408-2409-2410
2411-2412-2413
2414-2415-2416
2417-2418-2419
2420-2421-2422
2423-2424-2425
2426-2427-2428
2429-2430-2431
2432-2433-2434
2435-2436-2437
2438-2439-2440
2441-2442-2443
2444-2445-2446
2447-2448-2449
2450-2451-2452
2453-2454-2455
2456-2457-2458
2459-2460-2461
2462-2463-2464
2465-2466-2467
2468-2469-2470
2471-2472-2473
2474-2475-2476
2477-2478-2479
2480-2481-2482
2483-2484-2485
2486-2487-2488
2489-2490-2491
2492-2493-2494
2495-2496-2497
2498-2499-2500
2501-2502-2503
2504-2505-2506
2507-2508-2509
2510-2511-2512
2513-2514-2515
2516-2517-2518
2519-2520-2521
2522-2523-2524
2525-2526-2527
2528-2529-2530
2531-2532-2533
2534-2535-2536
2537-2538-2539
2540-2541-2542
2543-2544-2545
2546-2547-2548
2549-2550-2551
2552-2553-2554
2555-2556-2557
2558-2559-2560
2561-2562-2563
2564-2565-2566
2567-2568-2569
2570-2571-2572
2573-2574-2575
2576-2577-2578
2579-2580-2581
2582-2583-2584
2585-2586-2587
2588-2589-2590
2591-2592-2593
2594-2595-2596
2597-2598-2599
2600-2601-2602
2603-2604-2605
2606-2607-2608
2609-2610-2611
2612-2613-2614
2615-2616-2617
2618-2619-2620
2621-2622-2623
2624-2625-2626
2627-2628-2629
2630-2631-2632
2633-2634-2635
2636-2637-2638
2639-2640-2641
2642-2643-2644
2645-2646-2647
2648-2649-2650
2651-2652-2653
2654-2655-2656
2657-2658-2659
2660-2661-2662
2663-2664-2665
2666-2667-2668
2669-2670-2671
2672-2673-2674
2675-2676-2677
2678-2679-2680
2681-2682-2683
2684-2685-2686
2687-2688-2689
2690-2691-2692
2693-2694-2695
2696-2697-2698
2699-2700-2701
2702-2703-2704
2705-2706-2707
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2717-2718-2719
2720-2721-2722
2723-2724-2725
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2729-2730-2731
2732-2733-2734
2735-2736-2737
2738-2739-2740
2741-2742-2743
2744-2745-2746
2747-2748-2749
2750-2751-2752
2753-2754-2755
2756-2757-2758
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2762-2763-2764
2765-2766-2767
2768-2769-2770
2771-2772-2773
2774-2775-2776
2777-2778-2779
2780-2781-2782
2783-2784-2785
2786-2787-2788
2789-2790-2791
2792-2793-2794
2795-2796-2797
2798-2799-2800
2801-2802-2803
2804-2805-2806
2807-2808-2809
2810-2811-2812
2813-2814-2815
2816-2817-2818
2819-2820-2821
2822-2823-2824
2825-2826-2827
2828-2829-2830
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2837-2838-2839
2840-2841-2842
2843-2844-2845
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2849-2850-2851
2852-2853-2854
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2888-2889-2890
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2894-2895-2896
2897-2898-2899
2900-2901-2902
2903-2904-2905
2906-2907-2908
2909-2910-2911
2912-2913-2914
2915-2916-2917
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2921-2922-2923
2924-2925-2926
2927-2928-2929
2930-2931-2932
2933-2934-2935
2936-2937-2938
2939-2940-2941
2942-2943-2944
2945-2946-2947
2948-2949-2950
2951-2952-2953
2954-2955-2956
2957-2958-2959
2960-2961-2962
2963-2964-2965
2966-2967-2968
2969-2970-2971
2972-2973-2974
2975-2976-2977
2978-2979-2980
2981-2982-2983
2984-2985-2986
2987-2988-2989
2990-2991-2992
2993-2994-2995
2996-2997-2998
2999-3000-3001
3002-3003-3004
3005-3006-3007
3008-3009-3010
3011-3012-3013
3014-3015-3016
3017-3018-3019
3020-3021-3022
3023-3024-3025
3026-3027-3028
3029-3030-3031
3032-3033-3034
3035-3036-3037
3038-3039-3040
3041-3042-3043
3044-3045-3046
3047-3048-3049
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3056-3057-3058
3059-3060-3061
3062-3063-3064
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3068-3069-3070
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3074-3075-3076
3077-3078-3079
3080-3081-3082
3083-3084-3085
3086-3087-3088
3089-3090-3091
3092-3093-3094
3095-3096-3097
3098-3099-3100
3101-3102-3103
3104-3105-3106
3107-3108-3109
3110-3111-3112
3113-3114-3115
3116-3117-3118
3119-3120-3121
3122-3123-3124
3125-3126-3127
3128-3129-3130
3131-3132-3133
3134-3135-3136
3137-3138-3139
3140-3141-3142
3143-3144-3145
3146-3147-3148
3149-3150-3151
3152-3153-3154
3155-3156-3157
3158-3159-3160
3161-3162-3163
3164-3165-3166
3167-3168-3169
3170-3171-3172
3173-3174-3175
3176-3177-3178
3179-3180-3181
3182-3183-3184
3185-3186-3187
3188-3189-3190
3191-3192-3193
3194-3195-3196
3197-3198-3199
3200-3201-3202
3203-3204-3205
3206-3207-3208
3209-3210-3211
3212-3213-3214
3215-3216-3217
3218-3219-3220
3221-3222-3223
3224-3225-3226
3227-3228-3229
3230-3231-3232
3233-3234-3235
3236-3237-3238
3239-3240-3241
3242-3243-3244
3245-3246-3247
3248-3249-3250
3251-3252-3253
3254-3255-3256
3257-3258-3259
3260-3261-3262
3263-3264-3265
3266-3267-3268
3269-3270-3271
3272-3273-3274
3275-3276-3277
3278-3279-3280
3281-3282-3283
3284-3285-3286
3287-3288-3289
3290-3291-3292
3293-3294-3295
3296-3297-3298
3299-3300-3301
3302-3303-3304
3305-3306-3307
3308-3309-3310
3311-3312-3313
3314-3315-3316
3317-3318-3319
3320-3321-3322
3323-3324-3325
3326-3327-3328
3329-3330-3331
3332-3333-3334
3335-3336-3337
3338-3339-3340
3341-3342-3343
3344-3345-3346
3347-3348-3349
3350-3351-3352
3353-3354-3355
3356-3357-3358
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3362-3363-3364
3365-3366-3367
3368-3369-3370
3371-3372-3373
3374-3375-3376
3377-3378-3379
3380-3381-3382
3383-3384-3385
3386-3387-3388
3389-3390-3391
3392-3393-3394
3395-3396-3397
3398-3399-3400
3401-3402-3403
3404-3405-3406
3407-3408-3409
3410-3411-3412
3413-3414-3415
3416-3417-3418
3419-3420-3421
3422-3423-3424
3425-3426-3427
3428-3429-3430
3431-3432-3433
3434-3435-3436
3437-3438-3439
3440-3441-3442
3443-3444-3445
3446-3447-3448
3449-3450-3451
3452-3453-3454
3455-3456-3457
3458-3459-3460
3461-3462-3463
3464-3465-3466
3467-3468-3469
3470-3471-3472
3473-3474-3475
3476-3477-3478
3479-3480-3481
3482-3483-3484
3485-3486-3487
3488-3489-3490
3491-3492-3493
3494-3495-3496
3497-3498-3499
3500-3501-3502
3503-3504-3505
3506-3507-3508
3509-3510-3511
3512-3513-3514
3515-3516-3517
3518-3519-3520
3521-3522-3523
3524-3525-3526
3527-3528-3529
3530-3531-3532
3533-3534-3535
3536-3537-3538
3539-3540-3541
3542-3543-3544
3545-3546-3547
3548-3549-3550
3551-3552-3553
3554-3555-3556
3557-3558-3559
3560-3561-3562
3563-3564-3565
3566-3567-3568
3569-3570-3571
3572-3573-3574
3575-3576-3577
3578-3579-3580
3581-3582-3583
3584-3585-3586
3587-3588-3589
3590-3591-3592
3593-3594-3595
3596-3597-3598
3599-3600-3601
3602-3603-3604
3605-3606-3607
3608-3609-3610
3611-3612-3613
3614-3615-3616
3617-3618-3619
3620-3621-3622
3623-3624-3625
3626-3627-3628
3629-3630-3631
3632-3633-3634
3635-3636-3637
3638-3639-3640
3641-3642-3643
3644-3645-3646
3647-3648-3649
3650-3651-3652
3653-3654-3655
3656-3657-3658
3659-3660-3661
3662-3663-3664
3665-3666-3667
3668-3669-3670
3671-3672-3673
3674-3675-3676
3677-3678-3679
3680-3681-3682
3683-3684-3685
3686-3687-3688
3689-3690-3691
3692-3693-3694
3695-3696-3697
3698-3699-3700
3701-3702-3703
3704-3705-3706
3707-3708-3709
3710-3711-3712
3713-3714-3715
3716-3717-3718
3719-3720-3721
3722-3723-3724
3725-3726-3727
3728-3729-3730
3731-3732-3733
3734-3735-3736
3737-3738-3739
3740-3741-3742
3743-3744-3745
3746-3747-3748
3749-3750-3751
3752-3753-3754
3755-3756-3757
3758-3759-3760
3761-3762-3763
3764-3765-3766
3767-3768-3769
3770-3771-3772
3773-3774-3775
3776-3777-3778
3779-3780-3781
3782-3783-3784
3785-3786-3787
3788-3789-3790
3791-3792-3793
3794-3795-3796
3797-3798-3799
3800-3801-3802
3803-3804-3805
3806-3807-3808
3809-3810-3811
3812-3813-3814
3815-3816-3817
3818-3819-3820
3821-3822-3823
3824-3825-3826
3827-3828-3829
3830-3831-3832
3833-3834-3835
3836-3837-3838
3839-3840-3841
3842-3843-3844
3845-3846-3847
3848-3849-3850
3851-3852-3853
3854-3855-3856
3857-3858-3859
3860-3861-3862
3863-3864-3865
3866-3867-3868
3869-3870-3871
3872-3873-3874
3875-3876-3877
3878-3879-3880
3881-3882-3883
3884-3885-3886
3887-3888-3889
3890-3891-3892
3893-3894-3895
3896-3897-3898
3899-3900-3901
3902-3903-3904
3905-3906-3907
3908-3909-3910
3911-3912-3913
3914-3915-3916
3917-3918-3919
3920-3921-3922
3923-3924-3925
3926-3927-3928
3929-3930-3931
3932-3933-3934
3935-3936-3937
3938-3939-3940
3941-3942-3943
3944-3945-3946
3947-3948-3949
3950-3951-3952
3953-3954-3955
3956-3957-3958
3959-3960-3961
3962-3963-3964
3965-3966-3967
3968-3969-3970
3971-3972-3973
3974-3975-3976
3977-3978-3979
3980-3981-3982
3983-3984-3985
3986-3987-3988
3989-3990-3991
3992-3993-3994
3995-3996-3997
3998-3999-4000
4001-4002-4003
4004-4005-4006
4007-

4286
To all Gentlemen, Land-
lords and Tenants, and
other knowing Persons
of this Kingdom.

Worthy Sir,

THIS small Treatise
(through the importu-
nity of some Friends)
having been exposed to the pub-
lick view, and finding such Can-
did Acceptance as was beyond
expectation, it hath emboldned
me to adventure it a Fifth time
to the publick Censure, this Im-
pression

The Epistle.

pression having several Additions, and being also more methodical than any of the former Impressions: To the which I have added a Complot Table of all the chief Matters contained in this Treatise. Gentlemen, be pleas'd disavourably to censure, or lovingly to correct what material or literal Errors have either escaped the Authors Pen, or Printers Press; and you will thereby much oblige,

Gentlemen,

Your humble Servant,

George Meriton.

The Contents of the Chap-
ters.

CHAP. I.

Page 71

OF Leases, who may make them,
and for what term, and who
are, called Tenants in Fee Simple,
Tenants in Tail, general and special,
Tenant in Tail after possibility of
Issue extinct, Tenant by the Curtesy,
Tenant in Dower, Tenant for Life,
Tenant for Years, Tenant at Will
and Sufferance, Tenant by Copy
of Court Roll, and Tenant by the
Verge, &c.

CHAP. II.

Page 72

Several Cases concerning the various
Covenants, Conditions, Grants, and

A 3

Pro-

THE CONTENTS.

*Provided in Leases, and also of the
Reservations, Exceptions, Surren-
ders, and Assignments thereof.*

CHAP. III.

*Several cases touching Payments, Rents,
Acceptance, Remainders, Confirma-
tions, Extinguishments, Demands,
Re-entry, Limitations, and Attorn-
ments, &c. upon Leases.*

CHAP. IV.

*Several cases of the Dates, Commence-
ments, Continuances, and Determinations of Leases.*

CHAP. V.

*Of Corn sown where the Term is
ousted, or the Term determines
before it be ripe, who shall have it;
and also of Estovers, and Trees
blown down, &c.*

CHAP.

The Contents.

CHAP. VI. *Page 180*

*Of what things a Distresse may be taken,
and how it must be used.*

CHAP. VII. — *192*

*Who may take Distresses, and for what
cause, and when and where; how to
be ordered and sold.*

CHAP. VIII. — *201*

*Of Rescous, where it shall be lawful,
Sec.*

CHAP. IX. — *205*

*Of Replevins, when and where to be
sued out.*

CHAP. X. — *218*

Of Aduories.

A 4

CHAP.

The Contents.

C H A P. XI.

*Of Waste, what shall be waste in Houses,
Gardens, Woods, Pastures, &c. and
what not.*

C H A P. XII.

*Who are punishable in waste, and for
what waste, &c.*

C H A P. XIII.

*An Abridgment of the Statute of the
43 Eliz. and 15 Car. 2. about the
unlawful cutting, stealing, or spoyl-
ing of Wood, &c.*

Land-

Land-Lords L A W:

BEING

A Brief Account of the LAWS

CONCERNING

Land-Lord and Tenant.

CHAP. I.

Of Leases who may make them, and for what Term; and who are called Tenants in Fee-simple, Tenants in Tayl general, and special, Tenant in Tayl after possibility of Issue extinct, Tenant by the Courtesie, Tenant in Dower, Tenant for Life, Tenant for Years, Tenant at Will and Sufferance, Tenant by Copy, and Tenant by the Forge, Joint Tenants, and Tenants in Common.

I Am verily perswaded that there are few Landlords, nor Tenants, but they know what a Lease is, but it is very probable that many are ignorant of the reason why it is called a Lease: It will not therefore be amiss to set down its derivation.

A 5

Lease

Lease cometh of the French word *Laifer*, i.e. *Relinquere*, *Permittere*, &c. or is derived from *Lapsum* or *Lasum*, for that the Lessee cometh in by lawful means. *Distinction* is in French *Laiffer*, to depart with or forego, *Bract. lib. 4. f. 270. Fleta lib. 3. cap. 12. Co. on Lit. f. 43. b.*

A Lease doth properly signifie a Demise or Letting of Houses, Land, or some other Hereditament unto another, for a lesser Term then he that doth let it hath in it, for when one grants over to another, all the Estate and Term he hath, this is more properly a Grant or Assignment than a Lease.

The word Lease is also sometimes, (though improperly) applied to the Estate, that is, the Title, Time or Interest the Lessee hath in the thing demised or let, and it is also sometimes applied to the Instrument or Writing only.

In every Lease there must be Lessor and Lessee; he which lets the Land is called the Lessor, and he which takes or farms it is called the Lessee. See Terms of the Law verb. Lessor and Lessee.

There be two sorts of Leases for Years, that is, a Lease in Writing, and a Lease Per son, which is a Lease by word of Mouth, and either of these is good, if it be of Lands and Tenements; but a Lease Parol of a Com-

Ch. C. *Land-Lord and Tenant.* 3

Common, Office, Tythes, &c. is not good in Law; and Parol Leases are at this day much restrained by the Statute of Frauds and Perjuries, as will appear afterwards.

For if a Lease for Years be made reserving Rent, it must be of Lands and Tenements, whereunto the Lessor may have resort to distrain, 42 *Edw. in C. B. Burt's Case* Co. 7 Rep. f. 23.

And therefore a Rent cannot be reserved by a common person out of any incorporeal Inheritance; as Advowsons, Commons, Offices, Corrodies, Multure of a Mill, Tythes, Fairs, Markets, Liberties, Fairs, &c. but if the Lease be made by Deed in Writing of them, one may have an Action of Debt by way of Contract, but distrain one cannot: and if any Rent be reserved in such cases upon a Lease for Life, it is utterly void, 30 *Aff. p. 7.* 32 *Aff. 30.* 30 *E. 4. 10.* *Ca. on Ld. f. 47.*

A Lease for Years of Tythes rendering Rent, &c. although in strictness it be no Rent, yet is in the nature of a Rent, and shall have all the Qualities of a Rent, *Carwright and Pindley, Hill* 26 and 27 *Car. 1.* *Bo. Riles* 201.

There is also another mischief in a Lease Parol, for if such a Lease be made to any,

4 *The Laws concerning* Ch. I.

It behoves that he who makes it, be seised of the Lands and Premises, at the time of such Lease made, for else the Lessee, that is the Tenant may plead that the Lessor had nothing in the Premises at the time of the Lease made, and then the Landlord is barred of his Action; but if it be by Indenture in Writing, then the Tenant cannot plead this Plea, therefore it is great wisdom in all Landlords to have their Leases in Writing, whereby many Inconveniencies are prevented. See *Littletan's Tenures, lib. . cap. 7. Finch lib. 2. cap. 2. p. 109. 38 H. 8. Bro. Elapsed 8.*

But now by the Statute of the 29 Car. 2. called the Statute for preventing of Frauds and Perjuries, all Leases, Estates, Interests of Freehold or Tenure for Years, or any uncertain Interest of in, to, or out of any Messuages, Lands, Tenements or Hereditaments, are to be in Writing, and signed by the Parties making or creating the same, or by some other person on his behalf thereunto lawfully authorized; else shall have only the force and effect of Leases and Estates at Will, except Leases not exceeding the term of three Years from the making thereof, whereupon a Rent of two full parts at the least, of the full Improved value of the thing demised shall be reserved during the term.

And

And no Leases, Estates or Interests, either of Freehold or Terms for years, or any uncertain Interests, not being Copyhold, or customary Interests, shall be granted or surrendered unless it be by Deed or Note in Writing, signed by the party so granting or surrendering the same, or their Agents lawfully authorized by Writing, or by act and operation of Law.

Nor no Action shall be brought to charge any person upon any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest in or concerning them, unless the Agreement upon which the Action shall be brought, or some *Memorandum* or Note thereof shall be in writing, and signed by the party, or some other person thereunto by him lawfully authorized.

Note, every Lease for Years must be for a time certain, and ought to express the Term, and when it should begin and when it should end. And yet there may be a certainty in an uncertainty sometimes; for the Rule is, *id certum est, quod certum reddi potest*. See some pretty Cases about this Rule in the fourth Chapter of this Book: 3 Jac. in C. B. Bishop of Bath's Case, Ca. 9 Rep. f. 34, 35. 40 Elix. Rectos of Chesham's Case, Ca. 1 Rep. f. 155, 156. Bratt. lib. 7. cap. 9. Ca. on Lin. f. 43. b.

If a Man have a Lease for 999 years or 1000 years of Lands, it is left a Chancel, and falls to his Executors or Administrators after his death, if he do not otherwise dispose of it in his life time, 32 *lib. Aff. 6.*

All persons may regularly take Farms, except Spiritual Persons, who are prohibited, unless it be for the maintenance of their Families, 21 *H. 8. cap. 13. Cawell's Int. p. 192.*

Every one seized of an absolute Estate in fee simple in his own right, may make a Lease for as many years as he pleaseth, provided it be not to a Body Politick, lest by exceeding it seem a Devise in Mortmain; but Case if be a Lease to a Body Politick for 100 years, and so from 100 years, to 200 years, till 800 years be expired, this is Mortmain; nay, by the opinion of *Martin* if such a Lease be made but for 80 years, it is Mortmain, and in this Case the chief Lord may enter for the forfeiture, unless they have purchased Licence from the King and the said chief Lord. See 29 *H. 8. Mortmain 39. 4 H. 6. f. 9. Fines. f. 225. D. and 223. 2. J. Kinabon, p. 55. b. and 199. b.*

He who hath Fee full in his own right, or Fee simple in another's right, as Bishops, &c. in right of their Church, and Husbands in the right of their Wives, may now, but could.

could, not heretofore at Common Law, make Leases for three lives or 21 years. Stat. 32 H. 8. c. 38. Co. on Lit. 44. a.

Tenant in Tail, and the persons last mentioned, may make Leases for three lives, or 21 years; but no longer, but to the making good of such Leases, there are nine things necessary to be observed.

1. The Lease must be made by Deed Indented.
2. It must be made to begin from the making thereof, or from the day of the making.
3. If there be an old Lease in being, it must be either surrendered, expired, or ended within a year of the making of the new Lease, and the Surrender must be absolute and not conditional.
4. There must not be a double Lease in being at one time; for it must be either for 21 years or three lives, and not for both.
5. It must be for no longer time than 21 years, or three lives, but it may be for a lesser term, or fewer years.
6. It must be of Lands, Tenements or Hereditaments, manurable or corporeal, which are necessary to be letten, and whereunto a Rent by Law may be reserved, and not of things that lie in Grant; as Advowsons, Pairs, Markets, Franchises, &c. out of which a Rent cannot be reserved.
7. It must be of Lands and Tenements which have been most commonly let-

8 *The Lease concerning* Ch. 1.

ten by the space of twenty years, next before the Lease made; or if it be but eleven years, at one or more times within these twenty years, it is sufficient. 8. Upon every such Lease there must be reserved yearly during the Term, payable to the Lessors, their Heirs and Successors, &c. so much yearly Rent, as hath been most accustomedly yielded and paid for the Land, within twenty years next before the making of such Lease, or if it be more than the ancient Rent it is good enough. 9. It must not be made to hold without impeachment of waste, *Co. on Lit. f. 44. & Wingates Abridgement Stat. p. 290. Bro. Leases 47. Vide Hearn Law of Conveyances, p. 66, 67, 68.*

And if the Lease be thus made, it binds the Issue of Tenant in Tail, if he dye before the term be out; but if he dye without Issue, the Donor may avoid the Lease by Entry, and so may he in Remainder, and though he accept the Rent, yet it shall not affirm the Lease, *32 H. 8. 28. Noy's Maxims p. 69.*

The Husband seized in Fee simple or Fee tail in right of his wife, may make such a Lease of his Wives Land, by Indenture in writing, in the name of the Husband and Wife, and he to seal thereunto; and the Rent must be reserved to the Husband and his

Ch. 1. *Lord-Lord and Tenant.* 9

his Wife, and to the Heirs of the Wife, according to her Estate of Inheritance; and this shall bind her and her Heirs after his death, *Co. on Lit. f. 44. Noy's Maxims p. 69. Vide Finch. lib. 3. cap. 4.*

Bishops, Deans and Chapters, &c. seized of Estate in Fee, in right of their Churches, observing the Rules before mentioned, may make Leases for 21 years, or three Lives, and so may the Masters and Fellows of Colledges, and Wardens of Hospitals, of their Colledge Lands, if their private Statutes will permit, *Co. on Lit. f. 44. a. Parsons Law p. 29. Cowels Inst. p. 189. 13 Eliz. cap. 10.*

But the Colledges of the two Universities, of *Eaton* and *Winchester*, are obliged to take the third part of their Rent in Corn; yet are they not prohibited from letting freely those Houses which they have in any City, Burrough, Town Corporate, or publick Market Town, with the Lands belonging to them (provided they exceed not ten Acres, or be not the dwelling Houses of the said Persons) according to the Common Law of *England*, if it be not contrary to the private Statutes of their Colledges, *14 Eliz. cap. 11. 18 Eliz. cap. 6. Wingates Abridgements Statute p. 292, 293. Cowels Inst. p. 190.*

Those

Those who have Benefices cannot make a Lease of the same for any time longer than they reside there (the liberty of being absent 40. days every year being always permitted them) for if they do, they forfeit a years profit of the Benefice, to be distributed by the Ordinary amongst the Poor of the Parishes but every Person allowed to have two Benefices may let one of them (upon which he is not most ordinary resident) to his Curate only, but such Lease can endure no longer, than during such Curates residence, without absence above 40. days in any year, 13. *Edw. 2. c. 20. Wingate's Abridg. Stat. 292.*

But it hath been lately adjudged that a Parson or Vicar may at this day make a Lease for three lives or one and twenty years, and if the same be confirmed by the Patron and Ordinary, it shall bind his Successor, and is not taken to be restrained by the Statute of 13. *Edw. 2. c. 20.* that Enacts, That if such Parson and Vicar be absent from their Cure above 40. days in one year, their Leases shall cease and be void, for the Statute is to be intended of voluntary and willful absence, and not such as comes by the act of God, and a person dead and not in esse cannot properly be said to be absent, *Baily and Mann versus Selby, Hill. 24. Car. 2. B. R. Jagg's Parsons Councillor 229.*

If

If Tenants in Tail, Bishops, Deans and Chapters observe not the Rules before mentioned in making of their Leases, yet not withstanding the Leases are good against the Parties themselves. *Co. on Lit. f. 45. a. 1 Brownl. 21.*

And if a Lease be made by a Bishop for 21 years, according to the Rule aforesaid, which is spent within three years, now if the Bishop makes a new Lease to any other for 21 years, to commence from the making, which is confirmed by the Dean and Chapter, this is a good Lease, and the second lessee may enter when the first is out, and hold for the remainder of the Term of 21 years then to come. *Co. on Lit. f. 45. a. Pasch. 28. El. in B. R. Countess of Suffolk's Case. Litt. Rep. 1. part. 491. Parsons' Law, p. 27, 28. Heron's Lease of Convey. p. 89. 70. Demise, Grant, Take, to Farm let, and whatsoever words amount to a Grant, may serve to make a Lease. *Co. on Lit. f. 45. b. Bra. Reg. 60.**

Generally now every Lessee for life, years, or at will, although it be not never so small a Cottage or House is called a Farmor or Farmer, and the Premises he possesseth are called a Farm or Farms. *Terms of the Law, v. 1. Farm.* So we say in the Writ *A firmus seu sive*, which may be one reason that they are called Farms. But

But formerly the chief Messuage is a Village or Town, whereunto belonged great Demesnes of all sorts, which were used to be let for Term of life, years, or at will; was called a Farm or Fenn, *Terre de Ley* *ubi supra*.

• They are called Farms or Fenns of the Saxon word *Fœrmian*, which signifies to feed or yield Victuals, for in ancient times their reservations were for the most part in Victuals: until at the last, and that chiefly in the time of *Ed. 1.* by agreement the reservation of victuals was turned into Money, and so hitherto hath continued amongst most men, *Terre de Ley videtur loco, Plac. 1. C. 169.*

Under the name of Lands we comprehend not only Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Fens and Heath: but also Messuages, Houses, Towns, Mills, Castles, and such like, *Plac. Ca. on Lib. 1. cap. 2. Sect. 14.*

If the Lessor Seal the Indenture and not the Lessee, yet it was good against the Lessor as if both had sealed, *Vide Noy's Maxims, p. 57. 14 El. Finch lib. 2. cap. 3. p. 109.*

And if at any time there happen any variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended only the mis-
gession

prison of the Writer, for the bellows is the principal Devil, and the other but only a Counterpart; *Myss. Miscell.* p. p. 97. 14 *Ed. Phil. lib.* 21. cap. 2. p. 109.

Now we have spoken briefly something concerning Leases, and who may make them, and for what term; it follows next that we shall speak something of the several sorts of Tenants mentioned in this Treatise, and so we shall conclude this Chapter.

Tenant in Fee simple, is he which hath Lands or Tenements, to hold to him and his Heirs for ever; and it is called in Latin *Feodum Simplex*, for *Feodum* is called Inheritance, and *Simplex* is as much as to say, lawful or pure; and so *Feodum Simplex*, is as much as lawful or pure Inheritance, *Lessons's Tenures lib. 1. cap. 1. §. 1.*

Fee is derived *ex Beneficentia*, *beneficium*, that is a beneficial or profitable Term or Possession; Fee is divided into three parts, viz. simple or absolute; conditional, qualified or base; but it is not my purpose to speak of them, *Feod. lib. 1. 262. and 207. Pl. Com. Dyer 232. 233.*

Tenant in Tail special, is where Lands and Tenements be given unto a Man and his Wife, and the Heirs of their two Bodies begotten, in such case none may Inherit by force

first of each Gift, but shall not be divided between themselves, and it is called a joint Tail, for that if the Wife dye, and he take another Wife and hath Issue, the Issue of the second Wife shall never inherit by Force of the Gift: neither the Issue of the second Husband, if the first Husband dye, *Leiford's & Thomas's Case* 20 Rep. 117. *per And.*
 ¶ Their last Concluding Form of Writing Education special Tail, as to a Man and his Wife, and the Heirs Male of their Bodies betwixt them to be begotten: In this Case the Female cannot inherit, or to the Heirs Female of their Bodies, when the Male cannot inherit.

So that if Land be devised upon a Man and the Heirs Male of his Body, and he hath Issue two Sons and dyeth, the eldest sonnes and hath Issue a Daughter and dyeth: this Daughter shall not inherit the Land, but the Heir male, because he is the Heir Male.

¶ If a Man hath Land granted so high, and to the Heirs Male of his Body, and he hath no Son but only a Daughter, and the Daughter hath a Son and dyeth, leaving her Father, and a time that the Father dyeth: In this Case the Son of the Daughter shall not inherit, but the Heir male, and the Land shall revert to the Donor.

¶ And if Land be devised upon a Man and his Wife and the Heirs Male of their Bodies

Tenant

Tenant in general Tail, is when Lands or Tenements be given to a Man and to his Heirs of his Body begotten: In this case it is called general Tail, for that, that whosoever Woman the Tenant taketh to Wife, or if he have many Wives, and by each of them hath Issue, yet each one of these Issues by possibility may inherit the Tenements by force of the said Gift, because that every Issue is of his Body begotten, *Litteris ubi supra.*

It is the same case if Lands or Tenements be invested upon a Woman, and she have several Husbands and Children by them all, every one of them is in a possibility to inherit those Lands or Tenements, they being all begotten of her Body.

It is called in Latin, *Feudum Talliarum*, i. e. *hereditas in quodam certitudine limitata*: for if Tenant in general or special Tail dye without Issue, the Donor or his Heirs shall enter as in their Reversion: for in every Gift in the Tail, without more saying, the Reversion of the Fee simple is in the Donor, *Lib. 1. cap. 2. §. 3.*

Tenant in Tail after possibility of Issue extinct, is when Lands or Tenements be given unto a Man and his Wife in special Tail, and one of them dies without Issue,
now

now the surviving Donee is Tenant in Tail *after possibility of Issue extinct*. And if they have Issue during the life of the Issue, the Survivor shall not be said Tenant in the Tail, after a possibility of Issue extinct: but if the Issue dye without Issue, so that there be none alive that may Inherit by force of the Tail, then he that surviveth of the Donors is Tenant in Tail after possibility of Issue extinct: *Lat. Ten. lib. 2. cap. 3. f. 7.* And none can be Tenant in Tail, after possibility of Issue Extinct, but one of the Donors in special Tail.

This Tenant hath certain Priviledges in respect of the privacy of his Estate, and of the Inheritance that was once in him, which Tenant in Tail himself hath, and which Lessee for life hath not: As first he is punishable for waste: 2. He shall not be compelled to Attorn: 3. He shall not have aid of him in the Reversion: 4. Upon his Alienation no Writ of Entry in *Case simili casu* lyeth: 5. After his death no Writ of Intrusion doth lye: 6. He may joyn the Wife in a Writ of Right in a special manner: 7. In a *Præcipe* brought by him, he shall not name himself Tenant for life: 8. In a *Præcipe* brought against him he shall not be named barely Tenant for life, *Co. on Lit. f. 27. b. Temp. E. 1. Fitz. Waste*

Ch. 1. *Land-Lord and Tenant.* 17

Waste 125. 2 *H. 4.* 17. 7 *H. 4. f.* 10. and
11 *H. 4. f.* 14. 46 *E. 3.* 25. 39 *E. 3.* and
12 *E. 4. f.* 3. *Kitchin f.* 228. *a. b.*

And yet he hath four other qualities agree-
able to a bare Lessee for life, and not to an
Estate in tail: 1. If he makes a Feoffment
in Fee, this is a forfeiture of his Estate: 2.
If an Estate in Fee or Fee tail in Rever-
sion or Remainder, descend or come to
this Tenant, his Estate is drowned and the
Fee or Fee tail executed: 3. He in Rever-
sion or Remainder shall be received upon his
default: 4. An Exchange between a bare
Tenant for Life and him is good; for their
Estates in respect of their quantity are equal,
so as the difference stands only in the qua-
lity: *Vide* 39 *E. 3. tit.* 17. 45 *E. 3.* 25.
10 *H. 6. f.* 1. 11 *H. 4. f.* 14. 39 *E. 3. f.* 20.
Kitchin f. 228. *a. b.*

Tenant by the Courtesie of *England* is
where a Man taketh a Wife seized in Fee
simple or in Fee tail general, or as Heir
in tail special, and hath Issue by the same
Wife, Male or Female born alive, the Wife
deceasing, the Husband shall hold the Land
for his life, whether the Issue be dead or
alive, and this is by the Courtesie of *Eng-
land*, for it is used in no other Country,
List. lib. 1. cap. 4. f. 8.

Four things do belong to an Estate of Tenancy by the Courtſie, *viz.* Marriage, Seiſin of the Wiſe, Iſſue, and death of the Wiſe.

By the Cuſtom of Gavel-kind a Man may be Tenant by the Courtſie, without having any Iſſue, *9 E. 3. 38.*

In divers Caſes a Man ſhall by having of Iſſue be Tenant by the Courtſie, where a Woman ſhall not be Endowed, but it is not our purpoſe to ſearch into theſe things, *Vide 7 E. 3. 6. 17 E. 3. 51.*

Tenant in Dower is where a Man is ſeiſed of certain Lands or Tenements, in Fee ſimple, or in general tail, or as Heir in ſpecial tail, and taketh a Wiſe and deceaſeth, the Wiſe after his death ſhall be Endowed of the third part of ſuch Lands or Tenements that were her Huſbands any time during the Coverture, to have and to hold the ſame to her in ſeveralty, by meets and bounds for term of her life, whether ſhe have Iſſue by her Huſband or not, *Lit. lib. 1. cap. 5.*

By the Cuſtom of ſome Countries ſhe ſhall have half, as in *Kent*, ſo long as ſhe keeps her ſelf ſole and without Child; and the Cuſtom of ſome Towns or Burroughs, ſhe ſhall have the whole.

But

But the Wife must be nine years of Age, at the death of her Husband, or else she gets no Dower; and though the Husband be but four years old it matters not; and albeit *Consensus, non Concubitus facit Matrimonium*; and that a Woman cannot consent before twelve, nor a Man before fourteen; yet this indubitate or imperfect Marriage (from the which either of the Parties may at the Age of Consent disagree,) after the death of the Husband shall give Dower, Co. on Lit. f. 33. a.

There needeth neither Livery of Seisin, nor Writing to an assignment of Dower, because it is due of common Right, and it must be of some part of the Land, or of a Rent issuing out of the same, Co. on Lit. f. 35. Dyer 98.

To the Consummation of this Dower, three things are necessary, viz. Marriage, Seisin, and the Death of her Husband, Co. on Lit. f. 31. a.

There are five manner of Dowers, viz. Dower by the Common Law, by Custom, at the Church Door, by the Fathers Assent, and Dower *de la plus beale*; of all which you may read excellent matter in my Lord Cook on Littleton, on the Chapter of Dower, Vide Littleton's Tenures lib. 1. cap. 6. f. 11.

Tenant for Life, is he who hath Lands or Tenements for his own or another Mans life; and this Tenant hath a Freehold, but none other of lesser Estate hath a Freehold, *Littleton's Tenures lib. 1. cap. 6. No. 1. Maximus p. 20.*

If a Man be Tenant for Term of his own life, he hath an higher Estate, than he that is Tenant *per auter vie*, *Co. on Lit. f. 42. a.*

In a Grant for Term of Life, he that makes the Grant is called the Lessor, and he to whom the Grant is made is called the Lessee; so is it of Grants for years, &c. Note, As there is Feoffor and Feoffee, Donor, and Donee, Lessor and Lessee, so there is likewise Grantor and Grantee, Obligor and Obligee, Mortgagor and Mortgagee.

He that Enfeoffeth another in Lands or Tenements, is called the Feoffor, he to whom the Feoffment is made, is the Feoffee.

So when a Man giveth Lands or Tenements to another in Tail, he is called the Donor, and he to whom the Gift is made is the Donee; so he that pawneth Lands to another is called the Mortgagor, and he to whom it is pawned is called the Mortgagee.

Tenant for term of Years, is where a Man letteth Lands or Tenements to another for a certain term of years, as it is agreed

agreed between them; here when the Lessee entreteth, he is then Tenant for Term of years; and if the Lessor reserve to him a Rent, he may either distrain on the Premises, or have an Action of Debt for the Rent Arrear, *Littleton's Tenures lib. 1. cap. 7. Co. on Lit. f. 43. b. 44. a.*

There needs no Livery and Seisin to be given upon a Lease for years, but the Lessee may enter when he will; but upon a Lease for life, there must be Livery and Seisin; or else no Freehold passeth, and it will be only an Estate at will, *Co. on Lit. f. 48. a.*

Tenant at Will is, where Lands or Tenements are let by one Man to another, to have and to hold to him at the will of the Lessor: now when the Lessor enters, he is Tenant at Will, and the Lessor may put him out when he pleases, *Co. on Lit. f. 55. a. Fleta lib. 3. cap. 15.*

But if a Man let Lands to another by Lease, to hold the same during the will of the Lessee, in this case the Law intends it to be at the will of the Lessor also; and he may put him out when he pleases. The same Law is if it be at the Lessors, it is intended at the Lessees Will also, for the Lessor cannot force him to stay longer than he pleases, *Co. on Lit. f. 55. a.*

If a Man by Deed of Feoffment grants certain Lands to another, and delivers him the Deed, but executes it not by Livery and Seisin, the Feoffee in this case may enter that Land and hold it at the will of the Feoffor.

If a Man dwell in a House as Tenant at Will, he is not bound to repair the said House as Tenant for years is bound to do; but if he commit any wilful and voluntary waste in it, an Action of Trespass may be brought against him.

Tenant at Sufferance is he who comes in by lawful Lease, and keepeth possession after his Lease is out, and wrongfully holdeth over as Tenant for life of J. S. who holdeth over after the death of the said J. S. *Fitch lib. 2. cap. 13. Co. on Lit. f. 57. b. 21 H. 6. f. 42. Bract. lib. 4. f. 318. 4 E. 3. 35. 24 E. 3. 24. F. N. B. 201. D. Pl. Com. 138. Ad. 22 E. 4. f. 38. Kitchin f. 238. c.*

The Lessee cannot have an Action of Trespass against such a Tenant before his entry into the Premises, *Co. on Lit. f. 57. b.*

Tenant by Copy of Court Roll is, where a Man hath Lands or Tenements to him and his Heirs, in Fee simple, or in Fee tail, or for Term of life, long at the will of the Lord, after the Custom of the Manor, and these Tenants have no other Evidence to shew for

Ch. 1. Land-Lord and Tenant.

their Lands but the Copies of the Court Rolls, *Lit. Ten. lib. 1. cap. 9.*

This Tenant cannot alien his Land by Deed, for if he do, then the Lord may Enter for the Forfeiture, *Lit. ibid. 11 H. 4. f. 18. Kitchin f. 116. a. Ca. on Lit. f. 39. a.*

But it behoveth him that will alien his Lands to another, to surrender them in some Court into the Lords hands, to the use of him that shall have the Estate, *Lit. & Co. ubi supra.*

This Tenant is as well inheritable as he that hath Frank Tenement by the Common Law, if he observe the Custom of the Manor, and perform and pay his Services, *Vide 4 Co. Rep. f. 21, 22, 23, &c. Brian H. 2 E. 4. f. 80. & M. 7 E. 4. f. 19. per Danby.*

Tenants by the Verge, are after the same nature as Tenants by Copy of Court Roll, but the cause why they are called so, is for that when they will Surrender their Tenements unto the Lords hands, to the use of another, they have a little Yard or Rod, which by the Custom of the Manor they deliver unto the Steward or Bailiff, and he which takes the Land receives the Rod in Court from the Steward in the name of Seisin, and this is the reason why they be called Tenants by the

The Law concerning Ch. I.
Verge, but they have no other Evidence,
but Copy of Court Roll, *Lit. Ten. lib. 1.*
cap. 10.

There are several other Tenants besides
these we have named, as Tenant by Statute-
Merchant, Tenant by Statute-Staple, Te-
nant by Elegit, Tenant in Mortgage, Guar-
dian in Chivalry, Guardian in Socage, &c.
but here are but few Cases concerning them
in this Treatise, therefore we do but only
name them.

So there are Tenants in Coparcenary,
and that may be either by the Common
Law or by Custom.

There are also Jointenants and Tenants
in Common; Jointenants is where a Man
being seised of certain Lands, &c. doth
thereof enfeof two, three or more to have
and to hold them and their Heirs, or a Lease
for life or years to two or more, they are
Join-tenants.

Now the nature of Jointenants is, that
the whole Estate shall go to the longer-
liver.

Tenants in Common are such as have
Lands or Tenements by several Titles, and
not by one Joint Title, and none of them
knoweth what is his Several; these are said
to be Tenants in Common, because they
occupy and enjoy such Lands and Tene-
ments

Ch. 2. *Land-Lord and Tenant.*

ments in Common and undivided, and the
the Profits in Common, and yet come to
the same Lands and Tenements by several
Titles, and not by one Joint Title as Joint
tenants do.

CHAP. II.

*Several Cases concerning the various Covenants,
Conditions, Grants and Provisions
in Leases, and also of the Reservations,
Exceptions, Surrenders and Assignments
thereof.*

Covenant is an Agreement made be-
tween two Persons, where each of
them is bound to the other, to perform
certain Covenants for his part; now there
is a Covenant in Law, which is covert or
hid, and a Covenant in Deed, and this is
manifest and expressed.

As for Example, A Man lets his Lands to
another by Indenture for ten years, yield-
ing and paying to him, his Heirs, &c. 5 L.
by the year; now here is a Covenant im-
plied in Law, that the Lessee shall pay the
Rent; and if he fail, an Action lies against
him.

A Covenant in Deed, is when such a Lease is made, and the Lessee by express words in the same Lease doth Covenant for him, his Executors, &c. to pay the Rent to the Lessor, &c.

If the Lessor Covenant to make a new Lease upon surrender of the old Lease, and afterwards he makes a Lease by Fine for more years to a Stranger, here the Covenant is broken, though the Lessee did not surrender, the which by the words ought to be the full Act; for that the Lessor did disable himself either to take the Surrender or make a new Lease, 38 Eliz. Sir Anthony Main and Scotts Case, 5 Co. Rep. 110. *Abb. Rep.* p. 129. pl. 293. *Noyes Maxims* p. 13.

If a Man covenant and grant to R. A. that he shall have ten Acres of Land in C. for 21 years, paying 20 l. this is a good Lease, for the word *Covenant* is of such force as *Dismiss*, 37 H. 8. Br. *Leases* 60. *Ricard.* p. 233. *Harrington and Wyes Case*, *Abb. Rep.* p. 138. and pl. 804.

If a Man make a Lease for years, and the Lessee covenant to pay to the Lessor, his Executors and Assigns yearly during &c. 20 l. here if the Lessor die, the Executors shall have the Rent Arrear, *Noyes Maxims*

Ch. 2. *Land-Lord and Tenant.* 27

Maxims, p. 17 and 50. *Dr. and Stud. L. R.*
c. 24.

If the Lessee covenant for him and his Assigns to build a Brick Wall or an House upon the Lessors Land, or to pay a Collateral Sum of Money to the Lessor, and after the Lessee assigneth over his Term; in this Case the Assignee shall not be bound by this Covenant, because the things were only Collateral, and were not *in esse*, nor parcel of the Demise, at the time of the Lease made, *Pasch. 25 Eliz. in B. R. 5 Co. Rep. f. 16, 17. Spencers Case, M. 29 Eliz. in B. R. Barker and Fleetwells Case, Godbolls Rep. f. 69, 70. Vide Mayo and Buckbursts Case, M. 15 Jac. in B. R. Cro. 3 part f. 438 and 439. and Herns Law of Convey. p. 107, 108 and 109.*

If there be a Covenant in a Lease for years, that if the Rent be behind for such a time, then the Lease to be void; here no Acceptance of the Rent after such failure will make the Lease good again, *38 Eliz. 3 Co. Rep. f. 64. Pennants Case, Vide Cartwells Inst. p. 193. Dyer f. 51.*

If a Man let a House and Lands for years, and the Lessee covenanteth to uphold the Houses, and to leave the Houses and Lands in as good plight and estate as he found them; in this case if the Houses be blown down,

down by Tempest, or fired by Accident, or otherwise destroyed, if the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may bring an Action of Covenant against him at the end of his Term: but if he maketh waste in the cutting the Timber, the Lessor may have an Action of Covenant before the end of the Term for that, *Tr. 1649. Rot. 348. in B. R. Compton and Allens Case, Stiles Rep. 162. F. N. B. f. 145. K. Nays Max. p. 16. 40 E. 3. 5. Finch p. 64. 38 El. 5 part f. 20.*

And if the Lessee for years covenant and grant for him and his Executors with the Lessor, to repair the Houses as often as need requires, and after the Lessee assigns over his Term, and the Assignee suffers the Houses to decay; in this Case an Action of Covenant lies against the Assignee although he be not named in it, because it is a Covenant inherent to the Land, *M. 44 Elix. in B. R. Dean and Chapter of Wind-sors Case, 5 Co. Rep. f. 24. Moors Rep. the same Case, f.*

If *A.* lease a House to *B.* for years, and *B.* covenants to repair the House, and that it shall for *A.* his Heirs and Assigns be lawful to enter into the House, and see in what plight for matters of Reparations it stands,

stands, and if upon such view any default be found in not repairing, and thereof warning be given to B. his Executors, &c. then within four months after such warning it shall be amended; the House becomes ruinous for want of Reparations, A. grants the Reversion over in Fee to C. who upon view gives warning to B. of the default; in this case if it be not repaired within 4 months C. as Assignee to A. may bring his Action of Covenant, notwithstanding that the House became ruinous before his Interest in the Reversion, for the Action is not conceived upon the ruinous estate of the House, but for not repairing it within the time appointed, so as it is not material within what time the House became ruinous.

M. 30 El. in C. B. Maske's Case, Leve. Rep. 62, Abr. of Mours Rep. p. 77. pl. 363. the same. It is said a Copyholder is such an Assignee, as may have Debt or Covenant by the Statute of 32 H. 8. *Vide Plas and Plummers Case, M. 20 Jac. in B. R. 2 Cro. 17.*

Two Lessors make a Lease to two Lessees, and the Lessors covenant to discharge the Lessees of all Incumbrances done by them or any other Person, here though the words are joint, yet if either of the Lessors break Covenant, the Lessees may bring
their

this Action, for the Covenant goes as well to several Incumbrances, as to joint ones, for it is of all Incumbrances by them or any other Person, *M. 2 Car. B. R. Sanders and Meritts Case, Foybants Rep. 200. Lutbets Rep. 7. 161. the same Case.*

If a Man make a Lease for life or years to another, and covenant for him and his Heirs, that he will save the Lessee harmless from any claiming from by or under him, and the Lessor dies; and his Widow brings a Writ of Dower against the Lessee and recovers; in this case the Covenant is broken, and the Lessors are liable to the Action; but if he had been the Mother of the Lessor that had recovered Dower, then the Action would not have lain against the Heir, because she did not claim from, by or under the Lessor, *Tr. 21 Jac. in B. R. Gubbatts Rep. 233.*

Tenant for life makes a Lease for years, rendering Rent, and dies within the Term, and he in Remainder enters; the Lessee brings an Action of Covenant against the Executors of Tenant for life, and adjudged the Action would not lie, because it is but a Covenant in Law, which determines with the Estate and Interest of Tenant for life, without it had been broken in the life of the Testator; but if it had been an express

press Covenant in Deed, it is then otherwise. And if a Man seised in Fee-simple make such a Lease for years, an Action lies against the Heir, upon a Covenant in Law by reason of the privity. *Hill. 9 El. Dyer 257. Vide Swan and Searls Case, M. 1 El. Abr. Moore Rep. p. 34. pl. 199. and Brag and Wisemans Case, 12 Jac. Rep. 538. Brownlow's 1 part p. 25.*

Note also an Action of Covenant lies against an Executor of Lessee for years, upon a Covenant in Law though not named, for arrearages of Rent, upon the general words in the Lease *yielding and paying*, there being no other express Covenant in the Lease for the payment of the same. *M. 1653. in B.R. Driles Rep. 387. Newton and Osborns Case.*

The words *yielding and paying* do amount to an express Covenant and not only to a Covenant in Law, *Term. 17 Car. 2. B.R. Hellier and Calhoun's Case.*

The Lessor covenants that the Lessee shall enjoy the Land without disturbance, let or hindrance, &c. and afterwards the Lessor sues the Lessee in Chancery, suggesting that the Lease was made in trust to try a Title only, and this was adjudged to be no breach of Covenant, because it was a Suit in Equity, and not at Common Law.

Selby

Silly and Chotes Case, Abr. Moor's Rep.
p. 254. p. 1113.

But it hath been since held that a Suit
in Chancery may be a breach of a Cove-
nant for quiet enjoyment. *Morgan and*
Hunt's Case, C.B. 2 W. and M.

If the Lessor covenant with the Lessee
that he shall have sufficient Hedgeboot by
the assignment of his Bailiff, or him, and
not otherwise: here he may not take it
without assignment, *quis modus & coven-*
tis vincunt Legem, Co. on Lit. f. 41. b.
Tr. 28 H. 8. Dyer f. 19.

If a Man take a Lease by Indenture of a
ruinous House, or that wanteth Reparations,
and do covenant in the Lease to leave the
House at the end of the Term in good re-
pair; now whatsoever happen, he is bound
by the Rule aforesaid to leave it in good re-
pair; but if he do not covenant to do it,
the Law in such case binds him not to re-
pair it. *Perk. Tit. Conditions 738. Ad. 1649.*
in B.R. Stiles Regist. Pract. p. 75.

But if a Lease for years be made of a
Wood by Deed indented, and it is cove-
nanted that the Lessee shall leave the Lessors
Wood in as good plight as it was at the
time of the Lease made; and during the
Term the Wood is destroyed by a sudden
Tempest; in this case no Action lies against
the

the Lessee for Breach of Covenant, for it is not possible for him to perform the same; and *Lex non cogit ad impossibilia*, P. 14 H. 8. 32. *Parkes* 738. 4 E. 3. 6. *Philips Prin. of Law* p. 2. *Fixt. Covenants* 29. *Pleas* 11.

If Lessee for years covenant for him and his Assigns to repair a House from time to time, and to leave it at the end of the Term sufficiently repaired: In this case, though he assigns over his term to another, who pays Rent, and the Lessor accept it, and afterwards the House becomes ruinous for want of Reparation, yet notwithstanding the acceptance of the Rent of the Assignee, the Lessor may have his Action of Covenant against the Lessee or Assignee at his election; but after such acceptance of the Assignee for Tenant, he cannot have an Action of Debt against the Lessee, if the Rent become arrear, but is left to take his remedy against the Assignee only. *Fisher and Amers Case*, H. 8. *Jac. Rot.* 1061. *Brownlow* 1 part, f. 201 H. 15 *Car. in B. R. Norton and Acklands Case*, *Cra. 1 part*, f. 418. and H. 16 *Jac. in B. R. Sir J. Bret and Camberlands Case*, *Godbolts Rep.* f. 277.

If a Lease be made for years rendering Rent, and the Lessee is bound to perform all Covenants and Agreements, if he do not
pay

pay the Rent, the Obligation is forfeited; for the payment of the Rent is an Agreement. 26 H. 6. See *Goldborough's Rep.* p. 16. in the end, and *Baker and Spain's Case*, H. 11 Jac. in C. B. Rep. 3139. *Hoberts's Rep.* f. 8.

If a Lease for years be made with Warranty, this sounds not in the nature of a Warranty, but of a Covenant, because it is but a Chattel; and if the Lessee be ousted, yet he may have an Action of Covenant. 26 H. 8. 3. *Finch lib. 2. c. 2. p. 119.* *Pincomb and Ridges Case*, H. 5 Jac. Rep. 941. in *Br. Hoberts's Rep.* f. 3 & 4.

Covenant upon an Indenture dated 20 April, 4 E. 6. The Defendant pleaded in Bar a Release made 3 Edw. of all Actions, Suits, Debts, Executions and Demands which ever before he had or may have *ab origine mundi*, to the day of the date of the Release, and adjudged it was no Bar, because it was made before the Covenant was broken. *Hall and Kerbis Case*, *Abbr. Moors's Rep.* p. 18. pl. 107.

Lessee for years covenants for him and his Assigns that he will not lop nor top the Trees during the Term, he dies Intestate, his Administrator lops the Trees: In this case he is chargeable to the Covenant, because he hath the term to the use of the
Te-

Tellator, *M. 3. Elin. Abr. Moor's Rep.* p. 22. pl. 131.

H. brings an Action of Covenant against T. and declares upon a Lease for years made by the said T. by the word *Demise*, which imports a Covenant, and shews that at the time of the Lease made the Lessor was not seised of the Land, but a Stranger, and so the Covenant in Law broken. And the whole Court was of opinion that the Action did lie for the breach of Covenant was in that the Lessor had taken him to demise that which he could not; for the word *Demise* imports a power of letting, as *Dedi* a power of giving. And it is not reasonable to enforce the Lessee to enter upon the Land, and so to commit a Trespas: but if it were an exprels Covenant for quiet enjoying, there perhaps it were otherwise. *P. 11 Jac. Rot. 1358. Holder and Tailors Case, Hoberts Rep.* f. 12.

Covenant was brought upon the words *Covenant, Promise and Agree*, that the Lessee should quietly occupy and enjoy the Lands demised for seven years, and the Plaintiff shewed that a Stranger entred upon the Land, but did not shew that he entred by Title, and for that cause it was adjudged against him: and the difference was taken between a Covenant implied, as here

here it is in the words *Demise, Promise and Agree*: but upon a Covenant expressed, there the Lessor is to guard the Land against every Person. *Tisdale and Sir William Essex's Case, Abridg. of Moors Rep. p. 256. pl. 117. Hoberts Rep. f. 34. the same Case.*

Lessee for years of a Mannor, covenanted that he nor his Assigns would molest vex, or put out any Tenant from his Tenancy upon pain of Forfeiture. A breach was assigned that the Lessee entred upon a Tenancy of the Mannor, and beat and wounded the Tenant for his Tenement: and it was adjudged no breach without an Ouster, or disturbing him of the Profits of it. *Ab. Moors Rep. 112. pl. 510. Pen and Glevens Case.*

A covenants to make a Lease to B. and his Assigns for 21 years, the sense of these words shall be taken that he shall make the Lease to B. or his Assigns for 21 years. *Vide Plow. Com. f. 289.*

Note, That as there is a Covenant in Law and in Fact, so there is a Covenant merely Personal and Covenant Real.

A Covenant merely Personal is where a Man covenants with another by Deed to build an House, or to serve him, &c.

A Covenant Real is where a Man tieth himself to pass a thing real, as Lands or Tenements, or where he covenants to levy a Fine of Lands.

A. made a Lease to B. for forty years by Deed, and in the Deed covenanted and granted to the Lessee that he might take convenient Houseboot, Fireboot, &c. in his whole Wood called S. within the Parish of S. which Wood was other Lands, and not parcel of the Land leased. Resolved the Grant was good, and the Lessee should have it during the term, and his Executors shall take the same as his Assigns, and the Grant shall not restrain him; but that he shall have Houseboot, Fireboot, &c. in the Lands also leased unto him. *Moor's Rep. f. pl. 23.*

A Tenant covenants to do all reasonable Services for his Land-Lord with his Carts, Carriages, and otherwise as he shall be required; and being sued for breach of Covenant, in that he was requested to bring three Loads of Coals, and refused so to do; he pleaded, that at that time he had neither Cart nor Carriage, and it was held that he was thereby excused, for the Tenant in this case is not bound to keep a Cart or Carriage to serve his Lessor; but if at such time he had had a Cart when he was requested, then

then he ought not to have denied. *M. 2 Car. 1. Rot. 130. Mannert and Nessee's Case, Latches Rep. f. 202.*

But if a Lessee covenant with his Lessor, to bring him every year three Cart-loads of Coals; in this case he is bound either to keep a Cart for that purpose, or otherwise to procure one to bring them, else he is liable to an Action for breach of Covenant.

Words of Condition are, *sub conditione, ita quod, si contingat, proviso semper, and (issim)* To is a Condition by *Portman, Pl. Com. f. 107.* But the words *ad effectum, ex intentione, ad solvendum,* or the like, do not make a Condition in Feoffments and Grants, if it be not in case of the King, or in the case of a Will, *Vide 10 Co. Rep. 42. in Mary Portington's Case, and Herne's Law of Convey. p. 44. Dyer 138. Dr. and Stud. 122. a.*

All Conditions are either actual and expressed, which be called by our Lawyers *Conditions ex fact:* or else they be Conditions implied and covert, and not expressed and these are called *Conditions ex Ley.*

Also all Conditions are either precedent and going before the Estate, and are executed; or else they are subsequent, and following after the Estate and Executory; the

the Condition precedent doth gain and get the thing or estate made upon condition by the performance of the same, the Condition subsequent doth keep and continue the thing or estate made upon condition by the performance thereof.

Actual and expressed Condition, which is called Condition in Deed, is a Condition knit and annexed by express words to the Lease or Grant: As for example, If I make a Lease to a Man for years, reserving Rent to be paid at such a Feast, upon condition that if he fail of payment at the day, that then it shall be lawful for me to re-enter.

Condition implied, or Covert and not expressed, which is called a Condition in Law, is when a Man grants to one the Office to be Keeper of a Park, Steward, Bailiff, or such like, for term of life, here though the Condition be expressed in the Grant, yet the Law implieth a Condition, that if he do not faithfully and truly execute his Office, then it shall be lawful for the Grantee to discharge him thereof. *M. 33 E. 1. coram Rege in Thesaur. Levisq. de Durbanis Case, Lit. 18. b.*

Condition precedent and going before, is when an Estate is made to a Man for life, upon condition that if the Lessee for life will pay to the Lessor 20 l. at such a day, that

that then he shall have Fee-simple; here the Condition precedes and goes before the Estate in Fee-simple, and upon the performance of the Condition doth gain and get the Fee-simple, if Livery and Seisin were given.

Condition subsequent and following after, is when one grants to J. S. his Manor of Dale in Fee-simple, upon condition that the Grantee shall pay to him at such a day 20 L. or else that his Estate shall cease; here the Condition is subsequent and following the Estate in Fee-simple; and upon the performance thereof doth keep and continue the Estate. *Terms del Ley verb. Condition.*

No Man shall take advantage of a Condition, except he be party or privy to it.

If Lessee for 20 years make a Lease for 10 years upon condition, and the Lessee for 20 years surrenders to him in the Reversion, he in the Reversion shall not take advantage of the Condition, because he is in of another Estate. And if a Lease be made upon condition to be void if 10 L. be not paid at a certain day: here the Grantee of the Reversion shall not enter for such a Condition, because it is Collateral. *Vide Chaworth and Philips Case, Alwys Rep. f.*

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shall excuse him for the Oblige-
ment to give him more. But if the
Tenant had been appointed to a Stranger,
then the Obligor must have given notice
in his writ. *De Anstret* fol. 472. *Wile*
Brownlow 1 part, f. 135.

If a Man holds of Land in Fee Lease the
same to a Stranger for years, for six
years, upon condition that if the Lessee pay
to the Lessor 3 A. within the two last
years, that then he shall have Fee in the
same Land; in this case if he pay the Money,
he hath a good Estate in Fee; if Livery
and Seisin were made according to the
Deed. *Edw. 1* fol. 23. *Hy. 2* fol. 24. *Salut*
Drifford Case, *Co. 2* Rep. f. 73. and *2*
Edw. 1 Case, *Plowd.* Com. 487. *Co. 2* fol. 20.
12 *Edw. 1* fol. 217. *2* *Edw. 1* fol. 219. *2* and
Henn Law of Conveyance, p. 48. with next

But if a Man holds of Land in Fee Lease
the same to a Stranger for years, upon con-
dition that if the Lessee be ousted within
the term by his Lessor, that then he shall
have Fee: Here if the Lessee be ousted by
a Stranger without the Lessors assent, he
shall not have Fee. *1* *Edw. 1* fol. 219. and
Plowd. 708.

Several Persons make several Covenants
in one Indenture or Writing, the Seal of
one of them is broken away, that shall not
bind.

avoid the Covenant of the rent, but only the Covenant of him whose Seal is so debruised or defaced, because several Covenants; but it is otherwise of joint Covenants. *Marblewell Case, 5 Co. Rep. f. 23.*

It was adjudged 4 E/6. in C. B. that by a release of all Actions, Suits and Quarrels, a Covenant before breach of it is not released thereby, but by a release of Covenants, the Covenantor is discharged before the Breach. *Vide 5 Co. Rep. f. 70. 1 Rep. f. 112. and 10 Rep. 51.*

If a Man seised of Land in Fee, leaseth the same to a Stranger by Indenture, yielding 10 l. by the year, and the Indenture is, That if the Lessee will hold over ten years to him and his Heirs, that he shall then pay 20 l. by the year, and Livery and Seisin is made to the Lessee accordingly: In this case for the Rent behind within the ten years the Lessor shall have an Action of Debt, which proveth the Freehold, and the Fee are not in the Lessee before the ten years ended: but if when the ten years be past and ended, the Lessee doth still continue the possession of the same Land, and doth occupy it by force of the Indenture, then he hath Fee, and shall pay the 20 l. as a Rent Sekt: But if a Man

then he shall have but a term of two years, and he fails in payment of the rent by the last day of the year, he is gone, and he hath now but a Lease for two years. *Sheppard, tit. Co. on Lit. 218. 30 E. 3. 27.*

If a Lease be made upon condition, that if the Lessor do alien the Reversion within the term, then the Lessee shall have Fee, and the Lessor doth alien the Reversion in Fee by Fine or a Stranger: Here in this case the Lessor shall not have Fee for the Freehold and the Fee are lawfully in the Conscience before the Lessor can take it by condition: but if the Lessor had granted by Deed only to a Stranger, then the Lessee should have had the Fee by the Condition, and the reason is, because the Reversion is not in the Grantor before attainment. *6 R. 2. Cord. 1. Perkins, fol. 720.*

If a Man have a Lease for years, and demise or grant the same upon condition, and die: his Executors or Administrators shall answer for the Condition broken, for they are privy in right, and represent the person of the dead. *Perkins 833. Term del. Ley with. Piers. fol. 21. H. 7. 18. 2. and Co. on Lit. 218.*

All Grants of Reversions may enter upon Feoffment for any Forfeiture or Condition,

Ch. 10. Land Lord and Tenant. 87

don, and have like advantages against them
(by Action only) for any other Covenants,
Conditions or Agreements contained in the
Indentures of their Deeds: as the Lessor,
their Heirs or Assigns might, and so may
the Lessee against the Grantees of the Re-
versions (recovery in value only excepted)
and this by the Stat. of 31 H. 8. c. 34. But
herein a difference is to be taken between
Conditions and Covenants that are inher-
ent, and go with the thing let, and Cove-
nants that are collateral to it: for the inher-
ent Covenants which concern the thing
granted, and tend to the improvement of it,
are the same which the Grantee by this
Statute shall take advantage of: *2. R. 2. c. 13. §. 1.*
3. R. 2. c. 13. §. 2. *4. R. 2. c. 13. §. 3.*
5. R. 2. c. 13. §. 4. *6. R. 2. c. 13. §. 5.*
If a Man make a Lease for years upon
condition that the Rent shall be paid at
such times, and in the mean time give a ge-
neral Release to the Lessor of all Actions,
yet this doth not release the Rent, but the
Lessor may have an Action of Debt for it
after the day: and the reason of this is, be-
cause it was neither a release of the Rent
at the time of the Release made, nor is it
a release of the Rent in Action, because it
may be granted over, but by a Release of
Rent, the Rent is extinct and discharged,

whether the day of payment become or not.
Le. Ten. p. 104. b. 105. a. 1. *Ca. Joff.*
 1092. l. 45. R. 2. 2. H. 7. p. 43. H. 6.
 26. *Crane* l. 2. 293. *Nov. Maxim.* p. 171.
Sheppard Touchston of Affirmances p. 243.

A Release made to a Tenant for years, be-
 fore he enter into the thing leased, is void as
 to enlarge or alter his Estate, but a Release of
 the Rent is good and ordinary. *Ca. on Lis.* 701.

By a Release of all Demands without more
 words, are released all Rights and Tides to
 Land, Warrants, Conditions annexed to
 Estates both before and after they be broken
 or performed, and also Statutes, Obligati-
 ons, Comends, Recognizances, Covenants,
 Bonds, Cautions, and the like, and all
 manner of Actions real and personal, 493
 p. 493. *Dover* 493. *Warrants* 493.
 cutions and all other Duties whatsoever, ex-
 cept it be a new possibility, or future Duty,
 as a Rent payable after my death, and such
 like. *Ca. on Lis.* p. 291. *Sheppard Touchston*
Jan. p. 243. *Nov. Maxim.* p. 171.

A conveyance of a Lease for years, or
 of an House or any other Chattel real or per-
 sonal, and he give or sell all his Interest there-
 in, upon condition that the Donor or Vendor
 shall not alien the same, this Condition is
 void for uncertainty, and the Gift or Sale is
 absolute. *Sheppard Touchston* p. 131. *Nov.*

If

If a Man enters for breach of a Condition in Law, he shall avoid all charges and acts done after that thing is done which doth produce the forfeiture, but he shall not avoid any thing done before that time: for he must take the thing as he finds it. *Porkins* fol. 843, 844. *Co. on Lat.* fol. 223, 224. *Shrop. Touchstone* p. 155.

If there be a Condition to pay Rent, and the Lessee let part of the Land to other Under-Tenants, or let the Land to another for part of the time, and he undertake the Rent still, and fail of payment: in this case the Condition is broken, and Estate forfeited. But if there be any covine and practice in the case between the first Lessor and Lessee, the Under-Tenants may perhaps get relief in Equity. *Cromp. Jur.* fol. 64, 65. *Shrop. Touchstone* p. 147.

If a Lessor grant his Estate on condition to a Grantee, that if he get the good will of the Lessor, and so soon as it is let down when he shall grant: here he shall have time during the whole Term to get it, and though he deny it at first, yet if he grant his good will afterwards it sufficeth. *Porkins* fol. 795. *Shrop. Touchstone* p. 135.

If a Lease be made of a House on Condition that the Lessee shall not suffer any Woman great with Child to harbour or

Co. on l. 5. 142. 2. 148. 3. 149. 4. 150. 5. 151. 6. 152. 7. 153. 8. 154. 9. 155. 10. 156. 11. 157. 12. 158. 13. 159. 14. 160. 15. 161. 16. 162. 17. 163. 18. 164. 19. 165. 20. 166. 21. 167. 22. 168. 23. 169. 24. 170. 25. 171. 26. 172. 27. 173. 28. 174. 29. 175. 30. 176. 31. 177. 32. 178. 33. 179. 34. 180. 35. 181. 36. 182. 37. 183. 38. 184. 39. 185. 40. 186. 41. 187. 42. 188. 43. 189. 44. 190. 45. 191. 46. 192. 47. 193. 48. 194. 49. 195. 50. 196. 51. 197. 52. 198. 53. 199. 54. 200. 55. 201. 56. 202. 57. 203. 58. 204. 59. 205. 60. 206. 61. 207. 62. 208. 63. 209. 64. 210. 65. 211. 66. 212. 67. 213. 68. 214. 69. 215. 70. 216. 71. 217. 72. 218. 73. 219. 74. 220. 75. 221. 76. 222. 77. 223. 78. 224. 79. 225. 80. 226. 81. 227. 82. 228. 83. 229. 84. 230. 85. 231. 86. 232. 87. 233. 88. 234. 89. 235. 90. 236. 91. 237. 92. 238. 93. 239. 94. 240. 95. 241. 96. 242. 97. 243. 98. 244. 99. 245. 100. 246. 101. 247. 102. 248. 103. 249. 104. 250. 105. 251. 106. 252. 107. 253. 108. 254. 109. 255. 110. 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Upon these words *Demise, Grant*, in a Lease for years or lives the Lessee and his Assigns shall have a *Warrant of Covenant* always; provided there be no *Special Covenant* following after in such Leases; for then this general *Covenant* is qualified, and the former words *Demise, Grant*, shall lose their operation. *Kide. Dier. 257. p. 1. Ex. and Nether Case, 41 Ex. 4 Co. Rep. 10.*

If the Lessee Grant a Rent to a Stranger, the Tenant cannot Action nor sue the Grantee in possession by the delivery of an Ox or such like thing, because it is another thing; but upon a Recovery of a Rent, the Sheriff may deliver possession by such a thing. *40 B. 2. 15. Finch 11. 100. 2. 101.*

If one that hath a Lease for years Grant his Term to a Feme covert, and to another or if a Feme sole and another be Joint tenants for years, and the wife a Husband yet the Estate of the Feme and Jointure doth continue. So as the Survivor of the Wife or of the other shall have the whole Estate. *14. Ex. Pl. Com. 412. and Finch 11. 100. 3. p. 42.* If

If a Lessee for twenty years of Lands and Tenements grant the same Lands, for parcel of the years to a Stranger, reserving to himself twenty shillings: in this case he may distrain for the Rent reserved, or have an Action of Debt at his Election; because by common intendment he is to have the same Land after the years determined, because he hath granted but parcel of the years, so that the remainder continues in him, *Perkins* 1691.

But if *he* *grants* *the* *whole* *term* *of* *years* *in* *use* *for* *Term* *of* *years*, reserving Rent by word of mouth: in this case he cannot distrain for the Rent reserved, because no Reversion remains: but it is said he may have an Action of Debt for it, *vide* *Perkins* 1692. But this is to be understood before the Statute that transfers use into possession.

If a Lessee of Lands to another for years, the Term begins at the Feast of Easter next, and before the Feast the Lessee grants his Term to a Stranger: this is a good Grant, for he hath an Interest before entry, which may be granted over, *Co. on Lit. s. 46. 4. Perkins* 1691. But he granted to me, I may grant it away to a Stranger before I be seised thereof, *Perkins* 1692. *Te*

Tolson as will cannot grant over his
 Bill, for he has no living remedy, by
 Bill 6 2-4-1863 2-4-1863 2-4-1863

It is now given to another Comtee of Peasants for ten Hides in Lands to which a Town, though the Grant be given by yet the Grants shall not have Comtee; that the Lands reasonable, for as the Grant shall extend to Peasants Gardens, Parks, &c. 1588.

100

Tenant for life, the House to be 20
Tenant for life, and a third Tenant for life
March, and the Tenant for life, and the
Tenant for life, and the Tenant for life to
make, and the Tenant for life, and the
Tenant for life, and the Tenant for life
the Tenant for life, and the Tenant for life
and it was held in this Case that the Tenant
by his entry was a Disfein, and the
Grant as it was made by the Tenant of
the Tenant for life, and the Tenant for life
and the Grant being void at the beginning
the Tenant after Midsummer shall not
make

make the Reversion to pass, for good abin-
 tis was made, and the tenant was not usual-
 est. *Rever. Case.* 40. *Nil. in C. B. 2 C.*
Rep. f. 55. T. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

But it was held in *Fee* makes a Lease, de-
 tect the 20 of *August* for three lives. *Heber-*
den from *Michelm.* following, and the
 Lessor makes Livery after *Michelm.*, ac-
 cording to the said Lease: this was held to
 be a good Lease, the Livery being made by
 the Lessor himself, after the time the Lease
 was to commence: for here was no inten-
 tion that the Livery should operate futuro.

2. *C. 2. 62. Greenwood and Tipton Case.* 2. 2

Tipton in *Fee* grants a Rent Charge
Proviso that his person shall not be charged if
 the Grantor acknowledge a Recognizance
 according to 23. *El. 8.* and then after acknow-
 ledgeth to his Grantor, and now the Com-
 fute an Extent, and brings Debt on the
 Grantor as Tenant: resolved in this
 Case the Rent is extendible, notwithstanding
 standing the Release, it is in effect as to the
 Comfute, and cannot be discharged by the
 23. of the Comfute. *Lillingworth Case.* 21

3. *Fee. Case.* 2. *Rep. f. 28.* and vide *Seignior*
Abeyance Case. 2. *Fee. in C. B. Case.* 10
Rep. f. 38. *Fee. in C. B. Case.* 10
 In the Husband and Wife joined in a
 Term, in the right of his Wife, and the Hus-
 band

band bring an *Ejectione firmæ* in his own Name, and do recover and dye, in this Case his Executors shall have it, and not the Wife, for the Recovery doth rest the Term in himself, because it was in his Name alone, *Ca. on Lit. f. 46. b. Aff. p. 11. Pl. Com. 418.*

If a Man be possessor of a Term of forty years in right of his Wife, and make a Lease for twenty years, reserving Rent, and dye, here the Executors of the Husband shall have the Rent for that Term, but the Wife shall have the remainder of the Term when the twenty years are out; but if he had granted the whole Term, then she had got nothing, *Pl. Com. 460. b. Dame Hales Case. Ca. on Lit. f. 46. b. and 551. Heres Law of Conveyances 81. 82. and 812. Woman's Lease p. 131. Dyer 264. b. and Finch lib. 11 cap. 9. p. 72.*

A Release made to Tenant for years before his Entry to increase his Estate, is void; but a Release of the Rent before Entry is good; the Tenant may grant away his Interest to another before Entry; and although the Lessor dye before Entry, yet notwithstanding the Lessee may enter into the Land; or if the Lessor dye before Entry, his Executors or Administrators may enter; and if the Lease be made between two of them, and one of them die before Entry, yet his Interest survives;

bind

Ca

Ch. 2. *Land-Lord and Tenant.* 61

Co. on Lit. f. 279. a. 49 E. 3. 28. 23 H. 6. 8. Perkins f. 602. Vide Clerk of Assize p. 50. Co. on Lit. f. 46. b.

The Lessor cannot grant away the Reversion (before the Lessee's Entry) by the name of a Reversion. *Co. on Lit. f. 46. b.*

If one grant to his Lessee for years, that he shall have so many Eshovers as shall serve to repair his House, or that he shall burn within his House, or such like, during the Term, this is appurtenant to the Land, and shall go with the same as a thing appurtenant in whose hands soever the same cometh. *Vide Lateral Case, 43 Eliz. in B. R. 4 Co. Rep. f. 86. 22 Eliz. 381. Finch lib. 1. cap. 3. p. 15 Co. on Lit. f. 41. a. and 5 Co. Rep. f. 24.*

If a Lessee for years grant a Rent Charge, and then surrendreth, the Rent shall be paid during his Term to the Stranger. *1 Eliz. 128. Finch lib. 1. cap. 3. p. 27. Nays Max. p. 7. and vide Pl. Com. p. 225.*

If two Tenants in Common do grant a Rent of ten shillings, this is several, and they shall be charged with twenty shillings Rents but if they make a Lease, and reserve 10. Rent, they shall have no more than they reserve. *Litch Rep. f. 99. and Pl. Com. 171. in Hill and Grogan Case. 3 and 2 of Philip and Mary 140. b. 161. b. Cook*

23 If a single Woman be an Executor, and she takes a Husband, if all the Debts of the Testator be satisfied and paid, she may then deliver the Legacies of the Testator out of the Testator's Goods in despite of her Husband: And if the Debts and Legacies be all paid, she may give away the Goods of the Testator that remain in dispose of her Husband; but if she give away any Goods before the Debts and Legacies are satisfied and paid, then the Husband may have an Action of Trover against the Parties that receive them, because this shall amount to a *Deceit*: And if the Goods that remain of the Testator will not amount to satisfy the Debts, &c.

[illegible]

And if there be a difference between the Husband and the Wife, by reason whereof certain Lands of the Husband are assigned unto the Wife by the Husbands Friends, and by his own, and the Wife grants a Release of the same out of the same Land unto a Stranger, the grant is void, True

49 JUL 3 1908. P. 212. Vol. 8. *Yam* (moss)
We are infant grant & Grant by Fire. This
Grant is voidable by husband only during his
lifetime by wife or error, for if he do not
sue it during his lifetime it is good for
ever both against him and his heirs, *P. 212.*
Vol. 19. Note

Note

discheated, &c. to him; this Land can never be granted again by Copy; for the Custom is destroyed: but if the Lord keep it in his hands a long time, or leases it at will, he, his Heirs or Assigns may re-grant it: So if the interruption be tortious, as by disseisin and discent, false Verdict or erroneous Judgment: for, *Non valet impedimentum quod de jure non facit effectum*, & quod contra Legem sit, *pro infecto habetur*, *Frenches Case*, 18. and 19. *Eliz.* 4. *Ca.* f. 30.

If a Man grant me leave to make a Trench from such a Spring in his Land unto my Manor, so that I may lay a Pipe in the Land to convey the Water to my Manor in a Conduit, if afterwards my Pipe be broken, I may dig his Land to mend the Pipe, &c. *Mitch.* 9 *E.* 4. 35. *a.* *Perkins* sect. 3. *Brown* 1 part 225.

A Devise of the profits of Lands for years, is a Devise of the Lands themselves for so many years as the profits are devised, *Trim.* 1 23 *Car.* 1. *B. R. Pract. Regist.* p. 81. *Vide* *Owens* Rep. f. 6, 7. and *Pl. Com.* 524.

Sometimes the word *Provisio* shall be taken for a Condition; but then it must have these three qualities: 1. It must not depend upon another Sentence, nor participate thereof, but stand originally of it.

D

self;

self: It must be the word of the Bargain-
or, Feoffee, Donor, Lessor, &c. 3. It must
be compallory to enforce the Bargaine,
Feoffee, Donor, Lessor, &c. to do an act,
and where these concur it doth make a con-
dition, in what place soever it be placed; for
Cajus est dare, ejus est dispendere; then
sometimes the word *Proviso* or *Provided*
doth make a Covenant, sometimes an Ex-
ception, sometimes it is taken for a Reserva-
tion, sometimes for an Explanation, as
for Example in these Cases, If the Lessor
Lease Lands, provided that he shall not
alien without the assent of the Lessor *sub
pena satisfactionis*; here it is a Condition.
If I have two Manors, both of them re-
nted *Dale*, and I Lease my Manor of *Dale*
to one, provided that he shall have my
Manor of *Dale* in the occupation of *J. S.*
this *Proviso* is an Explanation: If a Man
leases an House, and the Lessee covenant
that he will repair it, provided always the
Lessor is contented to find the great Tim-
ber, nowhere it is a Covenant: If I Lease
my House to *C.* provided I will have a
Chamber my self, this is an Exception of
the Chamber. If I make a Lease of Lands,
rendering Rent at such Feasts as *J. S.* shall
name provided that the Feast of *S. Michael*
shall be one, here the *Proviso* is taken for a
Re-

Deu. 57. *Conu. by P. 241. How Law of Conuersion. 81.*

But the contrary hath been since aduanced, that the alienation of him who has the first Interest shall not prejudice the Remainder, *Ca. 10 Rep. 47. Langer's Case.*

Reservation is taken diuers ways, and hath diuers names, as sometimes by way of Exception so keep that which a Man had before, in him still, and then these words are most proper, *Exceptis, Reservatis, Præter, Saluis, &c.* and sometimes it doth get and bring forth another thing which was not in him before, and then these words *Tandem, reservandum, vendendum, reddendum, faciendum,* and such like are most proper, *Vide Termin. del. Lay. verb. Reservation, and Perkins Sess. 629.*

If a Man seized of Land doth give the same in Tail, reserving twelve pence, the same is good by the word *reservandum*, or if he Lease the same for life, rendering for the first six years three Quarters of Wheat; and if he hold over, &c. yielding five Pounds by the year; this is a good reservation by this word *reddendum, &c.* *Perkins Sess. 628, 630.*

And if a Man seized of Land lease the same for life, or giveth it in tail, *Solvend. sibi*

*Vide Paris consultand p. 92. and vide Brown-
lows 1 part f. 61.*

If a Man make a Lease to another for
twenty five years, rendering therefore yearly
during the said Term to the said Lessor and
his Assigns so much Rent; here if the Lessor
dye within the Term, *Orre* Chief Justice
held that the Rent continued and Judgment
was given accordingly in the Case between
Surry and Brown Hill. 60. Jan. Rep. 177.
Carb. 1. f. 99. But see *East. f. 299.* for
there Justice *Doddridge* said, That it was not
adjudged so in *Surry and Brown Case*; and
there in the Case between *Surry and Cole*,
it is strongly argued that the Rent was
gone upon the Lessors death, and I find
no Judgment there in the Case, but that
the Justices took a further day to advise
therein, *Vide Surry and Coles Case, Mich. 3*
Car. 1. Latches Rep. f. 255, 256, 257.
and 265, 266, 267. But this matter seems
to be now settled, that the Rent doth con-
tinue, *Trin. 23 Car. 2. B. R. Sackville*
and *Froggs Case.*

If a Man Lease Land to another By
Deed Indented, Except and always reser-
ved to the Lessor all great Trees growing
upon the same Land, by this Lease the great
Trees shall not pass, *Trin. 22 B. 3. Perkins*
sect. 642. Vide Pepal and Harringtons

Case, 27 Elix. in B.R. Popham's Reps. 117. 118.

If two Copartners make a Lease reserving Rent, they shall have this Rent in common, as they have the Reversion; but if afterwards they grant the Reversion excepting the Rent, then they shall be Joint-tenants of the Rent, *Finch lib. 1. cap. 3. p. 9.*

If a Man let Lands for years, and do reserve a Rent, and a Stranger doth recover part of the Land, then the Rent shall be apportioned, that is, divided, and the Lessee shall pay, having respect to that which is recovered, and to that which yet remaineth in his hands according to the value, *Co. on Lit. f. 148. b. Dyer 36 and 82.*

An Exception in a Lease is always of such things which the Lessor hath in him before the Lease made, with which things the Lessee is not to meddle.

As if a Man be seised of four Acres of Land and a House in the Town of *Dale*, in which House is a Chamber, and he doth enfeoff a Stranger of all his Lands and Tenements by Deed, which he hath in the Town of *Dale*, *Excepto* or *reservato sibi* the Chamber, or *propter* the Chamber, and sheweth the certainty thereof; in this Case the Chamber shall not pass, *Perkins sect. 641.*

And

Chap. Land-Lord and Tenant. 73

And if a Man sell a Wood except twenty Oaks, and sheweth which in certainty, this is a good Exception. 18 E. 3.

If a Man make a Lease of a Manor, an Acre excepted, this Acre is no part of the Manor as to the Lessor, but as to him that hath right to demand the Manor by eigne Title, it remains parcel, and therefore he shall make no forewize in his Writ. 1 P. and M. 143. Finch lib. 1. cap. 3. p. 18. Perkins 643. Philips Pr. of Law p. 122.

A Lease of a Manor excepting the Services, this Exception is void; for they are Parcel of the thing let, and so it is in the Lease of a Manor, excepting and reserving the Courts, Leets, and Law days, Fines, Heriots, Reliefs, Elcheats, Perquisites, and Profits of Courts; except it be in the Case of the King, and then such a Lease of a Manor with such Exception may be good, Finch lib. 1. cap. 3. p. 53. Trin. 13 Jac. Rat. 607. Brown and Goldsmiths Case, Harbarts Rep. f. 108.

If one make a Lease excepting a Close and Wood, the Law giveth him a way to it, 24 H. 8. f. 5.

Surrenders are either absolute or conditional, and there are two manner of

Surrenders, viz. a Surrender in Deed, and a Surrender in Law. now when the words of the Lessee to his Lessor prove a sufficient Assent that he shall have again the thing which he holdeth of his Lessor, they are words sufficient to make a Surrender, if the Lessor do agree to it; and this is called a Surrender in Deed, *Per Hen. 2. 600, 601.*

As if Lessee for life or years of Land say unto his Lessor, that his will is, that his Lessor shall enter into the Land which he holdeth of him for Life or years, and shall have the same again, and by force thereof the Lessor doth enter into the same, this is a good Surrender; but if the Lessor doth not enter by force thereof, nor agree thereunto, then the Surrender is void; for the Lessee cannot Surrender to his Lessor against his will; but if he to whom the Surrender is made do once agree to it, he cannot afterwards disavow the same, *6 E. 3. 7. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

And if the Lessee cometh unto his Lessor, and saith unto him that he will occupy the Land no longer; and the Lessor by force thereof doth enter, this is a good Surrender. And if the Lessee doth say unto his Lessor, I do Surrender unto you the Land which I hold of your Lease; or if he say I hold

hold such Lands or House, &c. of your Lease, and sheweth in certain the same Lands and House, &c. and then saith, I Surrender unto you the same Lands and House, &c. and the Lessor agrees thereunto, this is a good Surrender, *Perkins sect. 109. Hens Law of Conveyance p. 78.*

And if J. S. holdeth one Acre of Land for years of the Lease of C. D. and another Acre for life of him, and say unto him I Surrender unto you all the Land which I hold of your Lease, this is a good Surrender for both Acres; and the reason is because he doth not express in certain which Lands he doth Surrender; but if he had Surrendered the Land which he held of his Lease for years, then the Lessor should not have the other Land which the Lessee held for life, but the Lands for years only, & sic e converso, &c. *Perkins sect. 810.*

If I hold one Acre of Land for life of the Lease of the Father of J. S. and another Acre of Land of his Lease, and I Surrender unto J. S. the Land which I hold of his Lease, in this Case he shall not have the Land which I hold of his Father, notwithstanding that the reversion of the same Acre be in him by descent from his Father, *Perkins sect. 611.*

If a Woman who is Tenant in Dower taketh a Husband, and he doth Surrender the Land which he holdeth, in right of his Wife, for the life of the Wife; here if the Husband die before his Wife, or if they be divorced *causa præcontractus*, then the Wife may enter and defeat the Surrender; notwithstanding that he to whom the Surrender was made died seised of the Land in his demesne, as of Fee, and his Heir be in by descent; and so it is if the Wife had joyned with her Husband in the Surrender, &c. *Perkins* *sect.* 112.

But if a Ferne sole who is Lessee for years of Land, or an House, &c. do take an Husband, and he surrendreth, and dieth before the years are out, here she shall be bound by this Surrender, *Perkins* *sect.* 113.

If two Men seised of Land in Fee, do Lease the same unto a Stranger for life, and he doth Surrender all his Estate unto one of them, this shall enure unto them both; but if he Surrender unto them for twenty years, this shall not take effect as a Surrender, for there remaineth an Interest in the Lessor, which is as a mean Remainder between the Estate which is surrendered and their Reversion, &c. In the same manner as it is of a Surrender of Lands so it is of a Sur-

surrender of Deeds, or any other things,
mutatis mutandis. *Perkins* *feff.* 115.

If a single Woman seised of Land in Fee
granteth the same to a Stranger for life, and
then taketh Husband, and the Lessee doth
grant his Estate to the Husband this is no
Surrender: And yet the Husband is seised
of the Reversion in Fee, which is immedi-
ate unto the Estate of the Lessee, *viz.* in the
right of his Wife, and not in his own right,
&c. *Perkins* *feff.* 622.

If Tenant in Dower be of Land, and
she granteth her Estate unto him in the Re-
version, reserving Rent, this is a Surrender,
and the Reservation is void unless it be by
Deed indented; and she cannot distress for
the Rent unless there be a Clause of Dis-
tress in the Deed; and the reason is, be-
cause she hath no Reversion left in her, *&c.*
Perkins *feff.* 623.

A Surrender of a Freehold made by
Deed indented upon Condition is good,
and of an Estate for years upon Condition,
it is good without Deed. *Perkins* *feff.* 624.

If a Lessee for years do take a new Lease,
this is a Surrender in Law of the old Lease.
H. 3 Car. 1. Rot. 1302. in B. R. Wat and
Maidwells Case, Huttons Rep. 104. Per-
kins *feff.* 617.

It beloveth that he that doth surrender be seized or possessed of the Estate at the time of the Surrender, otherwise it is not good except in special Cases, therefore Lessee for years cannot surrender before his Term begin; but if before the Term begin he take a new Lease for years, either so begin presently, or at the time when his former Interest was to begin, this is a Surrender in Law of his former Lease; neither can he surrender part of his Lease, but he may grant part of it; but after his Term is begun he may surrender, although he have not yet entered upon his Farm: But if after his Entry he be ousted by a Stranger, and after his Ouster and before his Re-entry he surrenders to his Lessor, this is not good; because he hath but a Right at the time of the Surrender, &c. And therefore if a Woman who hath Title to have Dower by the Common Law, doth surrender to him against whom she is to have it, before she hath recovered or had Assignment of it, this is void. *Noy's Maxims* pag. 74. *Perkins sect.* 599, 600, 601, 602, 603.

If Lessee for life accept of a Lease for years, this is a Surrender in Law of his Lease for life, *Regist. Pract.* pag. 303. *Pasch. 24 Car. 1. B. R. Sheppard's Touchstone*, p. 301. *24 H. 8. 15. Vide Plowd.* 194.

Ch. 1. Land-Lord and Tenant. 79

If a Lease for life be of Land, the Remainer is a Stranger for years, and the Lessee for life doth surrender unto him in the Remainer for years, he shall not take effect as a Statute, because that an Estate for life cannot grow in an Estate for years, *Parkin fol. 589.*

Note that those things which cannot take effect without Deed, cannot be surrendered without Deed, except in some special Cases. And therefore if a Man seised of Rent, Tithes, Common, &c. granteth the same for life or years, the Grantee cannot surrender them without Deed, because they cannot be granted without Deed; and note that a Surrender cannot be made unto him who hath a joint Estate in the Freehold, or Term of years, with him that is to make the Surrender, *Parkin fol. 581, 582, 583.*

If a Copyholder for life surrenders to the use of another, who is admitted, by this the first Copyholder's Estate is clearly determined; but if a Copyholder in Fee surrenders to the use of another for life, after his death he shall have it again, *King and Lord's Case, 11 H. 7. c. 1. in R. Raym. fol. 129. b. 130. b.*

If an Infant surrenders Copyhold Land to another who is admitted, this is not good

good to let the Infant, for he may enter at
the full Age. *Quilley and Gower Case, 11 Mod.
100.* *11 Mod. 100.* *11 Mod. 100.* *11 Mod. 100.*
If a Woman Copy-holder take an Hus-
band, who surrenders, she shall be in dis-
continuance to the Wife, not her Heir,
35 *Elizabeth Bullock and Dibleys Case, 4 Co.
128.*

The Lord of a Manor seized a Copy-
hold without cause, and granted it to ano-
ther in Fee: the Grantor died and his Heir
was admitted; then the first Copy-holder
died, and his Heir entered upon the Heir of
the Grantor, and surrendered to the use of
a Stranger; and here the Heir Entry be-
fore Admission was adjudged lawful; and
his Surrender to the use of a Stranger
good; and it was resolved that the descent
of a Copy-holder doth not toll or take
away the Entry of another Copy-holder
who hath Right. *Trin. 3 Jac. B. R. Joy-
ner and Lamberton Case, 2 Co. 36. and
Pals. 35. Also Gower and Tudds Case,
4 Co. 34.*

If the Lessor make a Feoffment, and the
Lessee for years give lease to the Lessor to
make Livery and Seisin of the Premises,
saying to himself his Lease, and he doth so,
here the Term is not gone nor discontinued,
for the Lessee had an Interest, which could

not be surrendered without his consent to surrender; and here no such intent doth appear; wherefore he may enter and enjoy his Term, and the Rent is retained; but it is otherwise with a Lessee for life; for there the Rent is extinct, *Noy's Maxims* pag. 59. *Vide Advers. Rep.* pl. 42.

If two Jointtenants make a Lease for life, and the Lessee surrenders to one of them, this shall enure to them both, for that they have a joint Reversion; but if the Lessee grant his Estate to one of them no part of it shall enure to his Companion, because for the Moiety belonging to his Companion the Term is in being in him to whom the Grant is made; the Reversion to the other in Fee. *Co. on Lit.* 192.

If Tenant for life enfeoff him in the Remainder for life, this is a Surrender, and no Forfeiture, *Ca. on Lit.* 42. *a.* 19 E. 3. *Serv.* 8. *Perkins's* 1616.

If Tenant for life make a Lease by Deed or without Deed to him in the Remainder, or Reversion; this is no Forfeiture because he in Remainder is a Party; nor is it a Surrender because the whole Estate of Tenant for life is not given. *Ca. on Lit.* 42. *a.* 13 R. 2. *Dover* 95.

And if a Woman Tenant for life take Husband, and by Deed indented they make a Lease

Lease to him in the Reversion for the life of the Husband, reserving a Rent: this is not a Surrender nor Surrender; for the Reversion is the last Contingentment, *Co. Lit. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

But if a Woman Tenant for life take Husband, and they make a Lease to him in the Reversion for the life of the Wife, reserving Rent, this is a Surrender; for their joint Estate is granted and the Reversion is void, *Co. Lit. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

If a Lease for twenty years take a Lease for ten years so begin presently, upon Condition that if such a thing be not done, to be void; here the first Lease is sustained in Law; and though the second Lease be void upon the Condition broken, yet the Surrender is good, *Co. Lit. 7. 21 B. & Pl. Com. in Fulworsham's Case, 107. b. Vide Popham's Rep. f. 9. Heron's Law of Contingencies p. 73, 74. Finch lib. 1. c. 4. p. 62. 1. and 2 PA. and 20. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.*

If a Lessee for life or years of an House or Land, remove his Goods out of the House and Land, by reason of the greatness of the Rent; or because he is behind in his Rent, or for any other cause, and the Lessor do enter into the House and Land, this is no Surrender of the Tenant, *1 Aff. 30. Trin. 8 H. 3. 46. Perkins's lib. 1. c. 17.*

When

When the Lessee gives, grants, sells, lets or assigns his Lease or Interest to another, he who gives, grants, sells, lets or assigns it to him is Assignor in Deed, and Assignee in Law. Assignments in Deed in such manner as before mentioned Assignments in Law is every Executor named by the Testator in his Testament. As if a Lease be made to a Man and his Assigns, and he make his Executors and Assigns without Assignment of the Lease to any other, the Executors shall have the same Lease as if they are his Assigns in Law, *over coll. 1 & 11*

If the Lessee assigns over his Lease and die, his Executors shall not be charged for Rent due after his Death, *Neale's Case 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.*

And if the Executors or Administrators of a Lessee for years assigns over their Interest, neither doth any Action of Debt lie against them for Rent due after the Assignment, *Overton and Siddall's Case 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.*

Long Case, vide Hamble and Oliver Case
Mich. 29 Eliz. in B. R. Epiphani. Rep. 591
and 26 Eliz. in B. R. 420. 1. Brownl. p. 59. 28

But it was said by Dodderidge and May
 Justices, that if the Lessor for years cove-
 nant to sustain and uphold the Houses in
 as good plight as he found them at his en-
 trance, and after he assigneth over his Term
 and the Lessor the Reversion, in this Case
 the Assignee of the Reversion may have an
 Action of Covenant for the breach of this
 Covenant against the first Lessor, *H. 15 Jac.*
in B. R. Godolph. Rep. 1271.

Lessor for years covenants for him, his
 Executors and Administrators, to leave 15
 Acres every year for Pasture, *see culivore*
 and afterwards assigns over his Estate to
 another, who ploughs up all every year, and
 leaves none unploughed; and in this Case it
 was held by the Court that an Action of
 Covenant laid against the Assignee, though
 he were not named in the Covenant, because
 it is for the benefit of the Estate. But a Co-
 venant to do a collateral act, as to build a
 house or such like shall not bind the Assignee
 unless he be named, *P. 4 Jac. in B. R. Rot.*
607. Carter and Gyles Case, 2 Cox. 125.

When the Covenant doth extend to a
 Charge in any parcel of the Demise, then
 the thing to be done is appurtenant, and

quidammodo annexed to the thing, and shall bind the Assignee, though he be not named, as a Covenant touching the thing. In this case the Assignee and Assignees of Assignees are bound, and all officers that shall come to the Land by the act of Law, or by the act of the Parties shall be bound and charged by this the Covenant; but if the Covenant be annexed to a thing not as annexed, but as to be created on the thing, as to set up a new House, or the like, in this case it will not bind the Assignee unless they be named in the Covenant; and if the Covenant be to do a thing merely collateral to the thing, it will not charge the Assignee though expressly named. See *Deventer v. Dyke* 17. *Sheppard's Touchstone*, Sec. 7. 170. 3. Ca. 17.

A Lease is made of Land in *Middlesh.* and sealed in *Essex*, the Lessor assigns over his interest; the Lessee dies; and the Heir is seized; and the Administrators of the Estate brought an Action of Debt in *London* for the same; and it was not held good, for where Debt is brought upon a Lease for years upon the Covenant, there it may be brought in any place; but where it is brought upon the Privilege of the Estate, as in this case, it ought to be brought in the County where the Land lies. *2 Hill. 3. Town N. Smith and*

Wojles

Hayes Case, Lutw. Rep. f. 197. 1 P. 1 P.

4 Car. 1. Sir Strode, Bart. and Cadell's

Case, 1 Cr. 121. ; of 250 b. 21 b. 21 b. 21 b. 21 b.

self a lease for years be made to a Man

without any consideration the Lessee shall be

seised to his own use, Perkins fol. 936.

If a Man makes a Lease to another and his

Heirs for 20 years, surrendering that his Heirs

shall have 100 years if the Lessee die within

the Term, nevertheless the Tenant, the

Executors, and next the Heir shall have it,

Dr. and Student A. f. 24. 10 Co. f. 87.

Tench's case of Affirmance p. 271. 112. 25. 11. 11.

If a Man let an House to another and the

Land pass, but if it be under a lease for years

provident, here the Land is used with the same

deputy, *Pl. Com. 83. 112. 112. 112. 112. 112.*

8. 112. 112. 112. 112. 112. 112. 112. 112. 112.

Vide Hern and Allen's Case, Hill. 1 Car. 1.

Rot. 1876. 1 Cr. 41.

If a Man take a Lease of his own Land by

Deed indented, he is then concluded to say

that the Lessor had nothing in the Land at

the time of the Lease made, but after the

Lease is out the Estoppel is then removed,

Br. Estoppel 221. M. 31, 32 Eliz. in C. B.

in London's Case adjudged, Co. on Lit. 47. b.

Vide Moors Rep. f. James Case, and Terms

del Ley verb. Estoppel.

CH. 2.

11

If two Joyntnants are of a Lease for years and the one of them bids the other go out of the House and he does so; here he may have an *Writ of Force* against his Fellow as well as if he had put him out, 24 *Car. 1. Beverley's Case, Claytons Rep. p. 122. pl. 189. and Greenwood's Case, p. 146. pl. 265.*

If a Deed begin with these words, *The Indenture made, &c.* yet it is not an Indenture if it be not actually indented or cut at the top of the Parchment or Paper; but yet it may work as a Deed Poll, though it cannot work as an Indenture, 38 *Eliz. in B. R. Stiles's Case, 5 Co. f. 20.*

A Deed of Indenture made betwixt two ought to be sealed and delivered by both Parties to the Deed, otherwise it cannot be said to be a Deed indented, *Tr. 23 Car. in B. R. Regist. Pract. p. 164.*

C H A P. III.

Several Cases touching Payments, Rents, Acceptance, Remainders, Confirmations, Extinguishments, Demands, Re-entries, Limitations and Attornments, &c. upon Leases.

IF a Lease be made rendring Rent at *May day* and *Martinmass*, or within 15 days after either of the said Feasts, in this Case the Tenant need not pay till the fifteenth day, for that is the legal day, and the other only a voluntary day of payment, and not coercive: And if there be a Clause in the Lease, that if it shall happen the said Rent to be behind in part, or in all by the space of 15 days next after any of the said days of payment aforesaid, then the Lease to be void; in this Case the Lessee shall have 30 days, that is, 15 days after the 15 days to pay his Rent in safeguard of his Lease; and so the *quere* in 3 and 4 P. and *M. Dyer* 142. is well resolved, *Ad. 7 Jac.* in *C. B. Hare and Savils Case*, in *Brownlows* 2. part p. 273. *Herns Law of Conveyances* p. 23. *Sheppards Touchstones*, p. 138. *Vide* in *Clams Case*, Co. 10 Rep.

If a Man lease for years rendring Rent at the Feasts of the *Annunciation* and *Michaelmas*, or within 15 days after; here if the Lessor die after either of the Feasts, and before the 15 days be out, the Heir shall then have that Rent as incident to the Reversion, and not the Executors as Rent behind, because it was not due till the fifteenth day; for the disjunctive is added for the benefit of the Tenant; if the Lessee before the day pay the Rent, this is voluntary and not satisfactory; but it is good to give Seisin: if the payment be in the Morning, and the Lessor die at Noon; though this payment be voluntary too (for he need not pay till Noon) yet this is satisfactory against the Heir, 11 *Jac.* in *B. R. Olm's Case*, 10 *Co.* 127. *Harris' Law of Convey.* p. 22, 23.

One leased in Fee makes a Lease for years, rendring Rent at *Michaelmas*, the Lessor dies upon *Michaelmas* day after Sun set, but before Midnight, the Heir, and not the Executors shall have the Rent; so was it said by my Lord Chief Justice Hale in the Case of *Duggs and Boulton* against *Adams*, *Term. Et Car.* 2. in *B. R.*

If a Lease be made for five years, rendring Rent at *Easter-day* and *Michaelmas* yearly, or within ten days after, in this Case the Lessee shall have the liberty of the tenth day during

single the Tenant, but at the end of the Term he shall pay it at Michaelmas, and not at the tenth day, for that is without the Term; and if the Lessee had that liberty, then his Lessor should be without remedy for that Rent, therefore rather than the Lessor should lose his Rent, the Law rejects the said ten days, *21. 7 Jaci Barwick and Rogers Case*. *Brownless 1 part p. 105.*

¶ If Tenant in Dower make a Lease for years, rendering Rent, and then takes Husband, and the Rent is arrears, and the Husband dies, in this Case the Executors of the Husband shall have the Rent which was due him at his death, *7. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 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¶ If a Lease be made in May, rendering Rent at May-day and Martinmas, in this Case the first payment shall be at Martinmas next after the making of the said Lease, notwithstanding that May-day be first named, *Co. on L. 7. 11. 7. and 5 Co. 111.*

¶ If Tenant in Tail let part of the Land accustomedly letten, reserving the Rent we rate, or more, this is a good Lease of such Lands: or if the accustomed Rent were formerly payable at four Feasts, and now it is reserved and payable all at one Feast, yet it is good enough, *Co. on L. 7. 41. 3. H. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.*

Law of Cov. 2. 68.

If the Lessor covenant that the Lessee shall enjoy without let, trouble, interruption, &c. and afterwards he forbids an Undertenant to pay his Rent to the Lessee, this is no breach of Covenant, if after he forbid him he do not pay his Rent notwithstanding, *Trim. 9 Jac. in C.B. Rot. 726, Wichey and Lindsey* vers. *Nave*, in *Brownlee's* 1 part p. 81.

If a Lease for years be made to an Infant, this Lease is voidable, and if he waive the possession before the Rent day come, then an Action of Debt for the Rent will not lie against him; but if he enter upon the Land and occupy it till the Rent day come, he is then chargeable, or if he attain to Age before the Rent day come he is chargeable, P. 11 *Jac. in C.B. Keleys Case*, 1 *Brownl.* p. 120.

If a Man lease for years, rendering Rent at *Michaelmas*, and other Covenants, if the Lessee be bound in an Obligation to pay the Rent precisely, in this Case he must seek the Lessor to pay him, but if he be bound to perform the Covenants, &c. he may then tender it upon the Land (if no other place be agreed upon) and it shall suffice, for the payment is of the nature of the Rent reserved; but it is said by some, that when the Bond is for performance of Covenants generally

Ch. 3. Land-Lord and Tenant. 93

rally, there a demand must be made of the Rent, or else the Lessor shall not take advantage of the Penalty of the Bond; *Quere, Noy's Maxims* p. 80. 6 E. 6. Bro. Tender 20. P. 10 *Jur. in C. B. Manley and Jennings Case, 2 Brownl. p. 176.*

If I be seised of Lands, and lease the same to a Stranger for life or years, reserving 10 s. Rent to me, &c. payable at *Easter*, and the Lessee binds himself to me in a Bond of 100 l. to pay the Rent reserved upon the Lease justly according to Law; if before any day of payment I do put the Lessee out of part of the Land, and he doth occupy the residue for the whole Term, and will not pay any Rent; yet the Bond is not forfeited; for by the putting out of the Lessee of parcel of the Land, the whole Rent is in suspense; but if one day of payment be past before the Ouster, then he must pay the Rent, or else he forfeiteth his Bond, *Vide Pasch. 9 E. 4. f. 1. 4. Pasch. 45 E. 3. 3. Mich. 44 E. 3. 37. Perk. sect. 825.*

If a Stranger who hath not any right do put out the Lessee for years of the same Land before any day of payment, and keep possession thereof until the day of payment be past, yet the Lessee ought to pay me the Rent at the day whereon it ought to be paid, or otherwise he forfeits his Bond,

22 H. 6. *Perkins* sect. 826. *Vide Mich.*
23 Car. 1. 1. in *B. R. Parading and Foxes*
Cafe, Stiles Rep. §. 47, 48.

○ If three Copartners be seised of a Manor,
and one of them in her own Name, and
without the Agreement of the other two,
doth lease the whole Manor unto J. S.
for four years, paying five pounds yearly
at the Feast of *Easter* unto the Lessor
and her Heirs, and J. S. doth bind him-
self in forty pounds unto his Lessor to
pay the Rent reserved, &c. And before any
day of payment the other two Copartners
which did not consent to the Lease do put
the Lessee out of the whole Manor, and
keep the possession until the day of pay-
ment of the Rent incurred; yet it behooveth
the Lessee to pay the third part of the Rent
reserved to his Lessor, otherwise he forfeits
his Bond; for the two Copartners who put
him out have no right but to two parts of
the Manor, *Mich.* 12 H. 8. 3. *Perkins*
sect. 826.

○ Rent payable at a day, the party hath
all the day till Night to pay it; but if it be
a great Sum, as five hundred or one thou-
sand pound, he must then be ready as long
before Sun-set as the Money may be sold,
for the other is not bound to sell it in the
Night, 1 *Mod.* 192. *Fresh l. 1. c. 3. §. 28.*

Nayr

Chap. Land-Lord and Tenant. 95

Noy's Maxims p. 81. *Herm's Law of Conveyances* p. 30. and *Wades Case*, 43 *Eliz.* in *C. B.* 5 *Co. f.* 114.

If a Parson let his Glebe Land to a Layman, the Lessee shall pay Tithes to the Parson besides the Rent, because they are of common Right, *Finch l. 2. c. 1. p. 88.* 32 *H. 8. Bro. Dismes* 17. *Harris and Cartons Case*, 1 *Brownl.* 69.

If a Man make a Lease for years rendering Rent at the Feast of St. Michael, and about ten of the Clock in the Morning on Michaelmas day the lessor dies: now if the Rent be unpaid the Heir shall have it, but if the Tenant pay it that Morning before the lessor die, then the Executors shall have it, *Goldsborough's Rep.* 98. p. 17. and see in *Cluns Case*, *Co. 10 Rep. f.* 227. See before.

And so if a Man lease Lands and die before one of the Rent days, the Heir shall have the Rent due at the next Rent day after his death: but if there were any Rent arrear at the Rent day before the Lessors death, then the Executors or Administrators shall have that, and may either distress or have an Action of Debt for it.

If a Man lease a Stock of Cattel or other Goods, rendering Rent at several days, he shall not have an Action of Debt till all

the days be expired; and so it is upon an Obligation with several days of payment, for these are personal Contracts; but in case of a Lease for years of Lands, &c. it is otherwise, for that is a real Contract, and the Lessor may have an Action of Debt after every day for his Rent, or he may distress for it, *Co. on Lit. f. 47. h. and 292. b. F. N. B. 267.*

○ A Man is not bound to pay an Annuity without an acquittance, but a Rent-Service or Rent Charge he is; and therefore in an Action of Debt brought against a Man for Rent due upon an Indenture of demise of Lands he may plead payment without an acquittance, *Perkins sct. 780. Regist. Pract. p. 258. Kitebin 310. b. 1 H. 5. f. 6. and vide 9. E. 4. 27. a.*

If the King make a Lease rendring Rent without limiting any place, or to whose hands, the Lessee may either pay it to the Exchequer, or to the Bailiffs or Receivers of the King: When a Common person appoints no place of payment, the Law appoints it upon the Land, and there the demand must be made. And if the King grants over such Lands to another, then the Grantee cannot force the Tenant to go further than the Land for the payment of his Rent, for now the Rent shall ensue the

Ch. 3. Land-Lord and Tenant. 97

the nature of other Rents reserved by common persons, and those are payable upon the Land, *Hill. 43 Eliz. Burroughs and Taylors Case, Goldsboroughs Rep. p. 124. pl. 9. Moors Rep. the same, and 38 Eliz. in B.R. 4 Co. f. 72. the same Case, and vide Co. on Lit. f. 201. b.*

If two Joyntenants be, and they make a Lease for years by Parol, or Deed Poll, reserving a Rent to one of them; yet this shall enure to them both; but if it be by Deed indented, it shall enure to him alone to whom it is reserved by way of conclusion, *Co. on Lit. f. 47. a. and 8 Co. f. 70, 71. 5 E. 4. 4. a.*

If a Lease be of Land, and a Stock of Sheep, though the Sheep die, or that part of the Land is surrounded with the Sea, yet some are of Opinion that the whole Rent shall issue out of the Remainder; others hold that it shall be apportioned, because it is the Act of God, and *Actus Dei nemini facit injuriam. Dyer 36. Trin. 35 H. 8.* The Rent issues only out of the Land, *Moors Rep. 302.*

The Lessor upon a Lease at Will may distress for Rent Arrear, but if he impound the Distress in the ground letten at Will, the Will is then determined, *Co. on Lit. fol. 57. b.*

If the Heir make a Lease for Life to a Stranger reserving Rent, against whom the Mother recovers Dower and dieth, here the Lessee shall have the Land again for his Life, and the Rent is revived, *Co. on Lit. f. 42. a. 7 H. 5. 4.*

An Action brought for Rent or breach of Covenant upon a Lease, may be laid either in the County where the Lease was made, or in the County where the Lands lie, that are let by the Lease, but if it be an Action of Debt against an Administrator for Rent due by the Intestate, then it must be in the County where the Contract was made; and for Rent due in the Administrators time, since his Letters of Administration granted, then the Action must be brought in the County where the Lands lie for which the Rent is due, *Mich. 22 Car. 1. in B. R. and 23 Car. 1. in B. R. Styles Rep. Pract. p. 8. and 103.*

Upon a Lease for years a Man may reserve the Rent to be in the delivery of Hens, Capons, Geese, Turkeys, Oxen, Sheep, Rabbits, Spurs, Bows, Shafts, Horses, Hawks, Peppers, Currants, Wheat, or other profit that lieth in Renter, Office, Attendance, and such like, as well as in paying of Money, *Co. on Lit. f. 142. a. Perkins sed. 696.*

Acceptance is a taking in good part and as it were an agreeing unto some Act done before, which might have been undone and avoided (if such acceptance had not been) by him or them that so accepted. As for example, if the Successor of a Bishop, Abbot, or Prior, accept the Rent upon a Lease for years reserved by his Predecessor, he shall not now avoid the Lease, for it was but only voidable, and his acceptance hath confirmed and made it good. *Term de Ley. verb. Acceptance. 2 E. 6. Br. Leases 33. 32 H. 8. Dyer. 46. Ca. 3 Rep. f. 69.*

The acceptance of a Rent upon a void Lease will not make it good, but if it be only voidable it will, as *H. 8. Br. Acceptance 14.*

The acceptance of a Rent to begin presently, is a suspension of the Rent before any Entry; but it is otherwise if it be to begin in future, *Noy's Maxims, p. 72.*

Acceptance of a Rent which is not in Eff, nor due to him that accepts it, doth not affirm the Lease; as where Lands are given to the Husband and Wife, and the Heirs of the Body of the Husband, and he leases the same and dies, and the Wife accepts the Rent of the Lessee in his Mother's Life, and after she dies; now the
Issue

Issue may avoid the Lease, for when he accepted the Rent, it was due to his Mother and not to him, See 3 *Ca. f. 66. in Pennant's Case.*

If the Successor of a Parson or Vicar accept the Rent of a Lease for years made by his Predecessor, yet it is worth nothing, for the Lease is void by death; but it is otherwise of a Lease for life, *Ca. ubi supra*, 24 *H. 8. Bro. Leases* 19. 32 *H. 8. Dean* 20. *Leases* 31. *Revel and Hart's Case*, *H. 43 Eliz. Goldsbor. Rep. pag. 138. pl. 44. Vide Dyer 337.*

If he that hath Rent-service or Rent-charge accepts the Rent due at the last day, and gives an acquittance for it; all the Arrearages of Rent due before are hereby discharged, *Ca. on Litt. f. 373. a. 11 H. 4. 55. 10 Eliz. Dyer 271. Heron's Lease of Conveyances p. 40. Hopkins and Aderton's Case vouched in Pennant's Case, 3 Ca. 66.*

Tenant in Tail makes a Lease for forty years, to commence ten years after his death, rendering Rent, and after he dies, and the Issue enters and enfeoffs B. the ten years expire, and then the Lessee enters; here if B. accepts the Rent it makes the Lease good, *Ca. on Litt. f. 46. b. Pl. Com. f. 437. a.*

317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

If

If the Husband and Wife let the Land of the Wife for years, rendring Rent, and after the Husband dies; and she before any day of payment takes another, who accepts the Rent and dies; here it is said that she cannot oust the Tenant, because she might have avoided the Lease before the day at her pleasure, which now she hath resigned to him who was her second Husband, *Pasch. 4* and *5 Phil. and Mary. Dyer 160. Woman Lawyer p. 124.*

If a Lease be made rendring Rent upon condition of re-entry, and the Lessee paye his Rent to his Lessor, and he accepts of it and puts it in his Purse; and afterwards he finds that he had received counterfeit Mony, and refuseth to carry the Mony away, but enters for the Condition broken; here his Entry is not lawful, for when he had accepted of the Mony, the same was at his peril; and after allowance once of it, he cannot then take any exceptions to it, but is barred by his first acceptance, *Trin. 43. El. Rot. 406. C. B. Vane and Studlies Case, 5 Co. Rep. f. 114.*

If a Copyholder commit waste, whereby a Forfeiture accrueeth to the Lord, who afterwards accepteth of the Rent; this doth not bar the Lord, but he may enter for the Forfeiture of the Tenant, notwithstanding the

the acceptance of the Rent, *Mich. 39 El.*
in *R. v. Goddard* f. 47.

If a Copyholder forfeit his Estate, and
then Surrenders to the Lord, who accepts it,
not knowing of the Forfeiture, yet this is
no dispensation of the Forfeiture, *Hillary*
4 Car. 1. *R. v. 496. B. R. Mather* and
Whitmore Case, *Car. 1. p. 169.*

If Tenant for life lease Lands for years
and dies, the Lease is void, and the Rent
reserved upon the Lease is determined, and
acceptance by him in Remainder will not af-
firm it, for when it is once void by death,
no acceptance after will make it good.

If the Husband and Wife lease Lands of
the Wife for years, rendering Rent, and the
Husband dies, if the Wife accept the Rent,
she hath affirmed the Lease, *Kitchin* p. 342.
21 H. 6. f. 20. H. 6. f. ibid. 21 H. 6. 24.
Termes de Ley work. *Acceptance.* *Critica*
Bracton p. 12.

If Tenant in Dower Lease for years and
die, the Lease is void, and acceptance of Rent
by the Heir will not make it good again,
22 H. 8. Bro. Tit. Ancestor 24.

If a Man sell in Fee lot for ten years, and
after sell the Land, and take back an
Estate to him and his Wife, and then the
Husband and Wife Lease for twenty years,
reserving Rent, and the Husband dies, and
the

Ch. 3. *Land Lord and Tenant.* 103

the Wife accepts the Rent during the first ten years; yet this doth not affirm the second Lease, for the acceptance of the Rent before the Lease begins, and so before any Rent be due is no acceptance at all, *Finch lib. 1. cap. 4. p. 68. et Eliz. 569. Phillips pr. of Law p. 164.*

If an Infant be seized of Lands in Fee simple, and he makes a Lease thereof for years, rendering no Rent, this Lease is void, but if there be a Rent reserved upon the Lease, then the Lease is but only voidable, and may by the acceptance of the Rent by the Infant after his full age be made good, *Plowd. Com. 349. 9 H. 7. 24. Fafch. 18. B. 41 f. 2.*

There is a diversity between a Lease for life, and a Lease for years; in case of a Lease for life, though the conclusion of the condition be that the Lease shall be void, yet acceptance of the Rent doth after the breach doth affirm it and make it good again; for the Freehold being created by livery cannot be determined before Entry, but a Lease for years in such case is absolutely void, and so no acceptance after can make it good, *3 Co. Rep. f. 85. Sheppard's Touchstones, p. 485.*

Remainder is a residue of an Estate depending upon a particular Estate, and created

ted together with the same, and passeth forth of the Lessor at the time of the particular Estate made, *Co. on Ld. f. 49. Henr. Law of Contingent p. 19. Finch p. 113.*

In every Remainder five things are requisite.

1. That it depend on some particular Estate, as Lessor for life, upon condition that if *fr. S.* pay the Lessor twenty pounds, that then the Lessor shall enter upon Tenant for life, and then the Remainder over to another, this Remainder is void, because by the entry the first livery is made void, and there is no particular Estate continuing, whereof a Remainder may depend.

2. That it pass out of the Donor, Grantor or Lessor at the time of the creation of the particular Estate, whereon it must depend. For if the Lessor confirm the Estate of his Lessee for years, the Remainder in Fee, this Remainder is void, because the Estate for years was made before the Remainder, and not at the same time of the Remainder, *vide Doctor and Student lib. 2. cap. 20. f. 63. a.*

3. That it vest during the particular Estate, or at the instant time of the determination thereof, for there may not be a mean time between. For if one make a Lease

Ch. 3. *Land-Lord and Tenant.* 109

Lease for life, and that a day after the death of Tenant for life, it shall remain to J. S. this Remainder is void, because it doth not vest at the instant of the determination of the other Estate.

4. That when the particular Estate is created, there be a remnant of an Estate left in the Donor, Grantor, or Lessor, to be given by way of Remainder; for if Lessee for years grant over his whole Term to J. S. provided that if he die before the Term be out, then the Remainder to A. B. this Remainder is void, because he left no remnant in him when he granted his whole Term to J. S.

5. That the person or Body to whom the Remainder is limited, be able and of capacity to take the Remainder, or else the Remainder shall be void, for if a Lease be made of Land for term of life, the Remainder to the Mayor and Comonalty of C. whereas there is no such Corporation then in being, this Remainder is meerly void; albeit the Kings Majesty by his Letters Patents do create such a Corporation during the particular Estate, *Vide Noys Maxims* p. 123. and 124. and his *Compleat Lawyer* p. 78. and 81.

If Lands be given to J. S. and his Heirs, the Remainder for default of such Heir to

J. D.

J. D. and his Heirs, this Remainder is void, because he having given them to J. S. and his Heirs, which is a Fee simple, there can be no Remainder limited after that.

But if Lands be given to J. D. and his Heirs, during the life of J. N. the Remainder to J. B. this Remainder is good: for it is not limited to depend upon a Fee simple, but upon a particular Estate for life of J. B. disordable, *Noy, ubi supra.*

Lease for years, the Remainder over in Fee, if the Tenant enter before Livery and Seisin given to him, it shall be good for his Term, but the Remainder is void, because it was not out of the Lessor, at the time when the Lessee entered and took possession, *Hens. Linn. of Controversies, p. 4. Co. on Lit. 49.*

If a Lease be made to one for life, the Remainder to J. S. in Fee, who at that time is a Monk professed, afterwards is derained, and then the Tenant for life dieth: in this case J. S. shall not have the Remainder because he was not a person able to take it at the time of the Remainder appointed, *Noy's Maxims p. 123. and the Compleat Lawyer, p. 83.*

But if such Remainder had been limited to the first begotten Son of J. S. It had been good, and should accordingly have vested

vested in such a Son afterwards born, during the particular Estate; and note the diversity between a Remainder limited by a particular name, and a general name: for where a Remainder is limited by a general name, though the person be not *in esse* at the time of the Remainder limited, yet it may be good, as in this Case: but where it is limited in particular by name of Baptism and Surname, it is not good if the person be not *in esse*, or capable at such time, *vide Case 2 Rep. 53.*

The thing whereof a Remainder shall be created, must be *in esse* before, and at the time of the appointment and creation thereof, or else the Remainder is void. For if I grant a Rent out of my Land, the Remainder in Fee, this is void, because the Rent was not *in esse* before, *Hens Lowd of Courcyances p. 4.*

But this seems to be contradicted by a late Judgment, where one devised a new Rent in tail, the Remainder over in Fee, it was held to be a good Remainder, *Smith and Farnaby's Case, 18 Car. 2. B. R. 1 Siderf. 285.*

No Remainder may commence upon any repugnancy, or impossibility precedent, nor upon any condition that goeth to the destruction of the particular Estate.

Estate, for Conditions always inure in privity.

Therefore if a Man make a Lease for life, rendering Rent, upon condition, that if the Rent be behind, then the Remainder to a Stranger in Fee, after the first Estate ended, this Remainder is void, because Conditions inure always in privity; but if a Man devise his Land to his Wife for her life, upon condition that if she marry, that then the Land shall remain to *H. M.* in tail, this is good; for the Construction of this Devise is to make the same Condition to be a limitation, and not a Condition, and upon a limitation or determination of a particular Estate which is taken, and not uncertain, a Remainder clearly may well depend, *Hew's Law of Wills* p. 6, 7.

If a Lease be made to two, the Remainder over in Fee, after the death of the first of them; this Remainder is void, because the Survivor shall hold place after the death of the first, and therefore the Remainder is repugnant and void, *Hew's ibid.*

If a Lease be made for life, the Remainder for life; and if the first Tenant for life die, then the Remainder over to a Stranger in Fee: this is void, because it dependeth upon a repugnancy precedent.

When

When a particular Estate which doth support a Remainder may determine before the Remainder may commence, then the Remainder doth not vest forthwith, but dependeth in contingency.

As if one make a Lease to *J. S.* for life, and after the death of *J. D.* the Remainder to another in Fee, this Remainder dependeth in Contingency; for if *J. S.* die before *J. D.* the particular Estate is then determined before the Remainder can commence. So if a Lease be made to *A.* for life, and if *B.* die before *A.* that then it shall remain to *C.* for life, this is good upon Contingent (if *A.* survive *B.*) So of a Lease made to one for life, the Remainder to the right Heirs of *J. S.* this is also good upon Contingent, that if the Lessee for life outlive *J. S.* or else not. And also if a Lease be made to *A.* for life, the Remainder to *B.* for life, and if *B.* dies before *A.* the Remainder to *C.* for life; this is a good Remainder on Contingent, if *A.* survive *B.* or else not, *vide Mich. 17 E. 3. 87. Trin. 1 H. 7. 31. Perkins sect. 52. vide 29 El. in Bora-*
four Case, Co. 3 Rep. f. 19. 32 H. 6. T. 1;
Feeslments and Fairs 99 Co on Lit. f. 378. a.
Kitchin f. 155. a. Noy's Maxims p. 122.
And his Compleat Lawyer, p. 79. Horns
Law of Cwory. p. 8.

When

[illegible]

times it may pass by the words *Datione*
Concessio, yet the most proper words are *Con-*
fessione, *Ratificatio*, and *Approbatio*, which
do signify *Ratum & firmum facere*, & *sup-*
plere omnes defectus. And he that makes
the Confirmation is called the Confirmer,
and he to whom it was made, the Confir-
mee, Co. on Lit. 375. *Terms of the Land*
Confirmation, B. 2. lib. 2. 40.

There are two kinds of Confirmation,
viz. a Confirmation implied in Law, which
is when the Law by construction makes a
Confirmation of a Deed made to another
purpose, and a Confirmation expressed in
a Deed, which is when the act done in
a Deed made, is intended for a Confirmati-
on, and both these are always in writ-
ting, Pl. Com. 140. Co. 9. Rep. 7. 136. and
Co. on Lit. f. 293. *Sheppard's Touchstone*,
cap. 18. p. 311.

If an Infant make a Deed for twenty
years, and the Lessee doth waste a Lease to
another for all or part of the Term, and the
Infant at his full age doth confirm this se-
cond Lease, this is a good Confirmation,
and doth perfect the Lease, for it is a *Ratio*
Tota which I take to be a *Ratio* that
may confirm by any Deed, but if there be
no precedent Estate, on which the Con-
firmation may work, so that the Lease be
full.

such an Estate as is meerly void, then is the Confirmation void also, and cannot take effect as a Confirmation: and so it is if he to whom the Confirmation is made have nothing in the Land, or have an Interest in the Land, and no Possession; or if the Confirmer have not such an Estate and Property in the thing whereof the Confirmation is made, as that he may be thereby enabled to confirm the Estate of the Confirmer; in these Cases the Confirmation is void, *Co. on Lit. f. 295, 301. Bract. lib. 2. f. 27, 58. 32 E. 3. 9. Ragways Case, Dyer 109. Sheppards Touchstone, p. 113.*

A Lease for years may be confirmed for a time, or upon condition, or for a piece of the Land; but if it be a Franktenement, it shall enure to the whole absolutely, *Noy's Maxims p. 78. Co. on Lit. f. 297. and 5 Rep. f. 81, 82.*

A Prebend leaseth for seventy years, the Patron, Dean and Chapter confirms the Demise aforesaid, in form aforesaid, for fifty one years, and no further, this is a Confirmation of the whole Term: for when they confirm the Demise aforesaid, in form aforesaid, the following words, for fifty one years are requisite: but if they had recited the Lease, and confirmed the Land for fifty one years, this had been good: but

If Tenant for life, and he in Remainder by Fee make a Lease by Deed indented, and the Lessee be entered during the Term in the life of Tenant for life, he then must declare in his action of a Lease from Tenant for life; and if it be after his death he must then declare of a Lease from him in Remainder. *Co. on Lit. 45. a. 27 H. 8. R. 13. and 14. 21. Newdigates Case, Dyer 234. Mowbray the same Case.*

If a Parson lease his Glebe Land for years, if it be confirmed by Patron and Ordinary, it shall bind the Successor, otherwise not; the same Law for a Prebend, *Perkins sect. 35. Co. on Lit. f. 100. Dyer 69. Parsons Law chap. 4. Trin. 21 Jac. Rex. 3461. Spynlow and Barkers Case, Hobart's Rep. f. 7.*

In Debt brought for Tithes, the Case was, A Parson made a Lease of his Rectory for sixty years; which was confirmed by the succeeding Bishop, and the succeeding Patron, neither of them being Bishop or Patron at the time of the Lease; and here it was resolved by the whole Court that the Confirmation was good, *Trin. 2 Car. in B. R. Sir Robert Banister's Case, Cro. 1 part 27.*

If Tenant in Tail lease his Lands for twenty years, rendering Rent, and die, and the

the Lessee leases to another for ten years, and the Issue in Tail accepts the Rent of the second Lessee, this doth not confirm the Lease, for there is no Privy between the second Lessee and the Issue. But if he accept it of him as Bailiff of the first Lessee, it is otherwise; or if the first Lessee had leased over all his Term in parcel of the Land set, and his Assignee pays the Rent to the Issue in Tail, who accepts it; this affirms the Intire Lease: For Rent upon a Lease for years is not apportionable in this Case, 32 H. 8. Bro. *Acceptances* 13.

Extinctment is where a Lord of a Manor, or any other, hath a Rent going out of Land, and he purchaseth the same Land, so that he hath such Estate in the Land as he hath in the Rent, then the Rent is extinct and gone, for that a man may not have Rent going out of his own Land. And when any Rent shall be extinct, it behoveth that the Rent and the Land be in one hand, and that he have as good Estate in the Land as in the Rent; for if he have Estate in the Land but for Term of life or years, and hath a Fee-simple in the Rent, then the Rent is not extinct, but in suspense for that time, and then after the Term the Rent is revived, *Terms of the Law*.

If a Man let Land for years or life, reserving Rent, and do enter into any part thereof and take the profits, the whole Rent is thereby extinguished, and suspended during such time as the Lessor holds out his Lessor: nay though after such Entry he quit the Possession again, yet till such time as the Lessee re-enters the Rent is gone. *M. 30 Eliz. in C. B. Case and Hills Case, Latham's Rep. 112. Hill 43 Eliz. in C. B. How and Barnes Case, Goldborough's Rep. p. 125. p. 14. Noy's Maxims, pag. 704. Heron's Law of Carriage, p. 118. See Mich. 34. Eliz. in C. B. Gullard's Case, Owen's Rep. f. 10. and 32. 39 and 40. Eliz. Rotherham and Green's Case, Goldborough's Rep. p. 114. p. 6. P. 14 B. 4. &c.*

But if the Lessee surrender a part to his Lessor, or that the Lessor enter into part for a fine, or recover a part of the Land in waste, or if part of the Land be evicted by Title paramount, in all these Cases the Rent shall be apportioned; so if the Lessor grant part of the Land to a Stranger, the Rent shall be apportioned, because it is incident to the Reversion. *Ca. on Lat. f. 142. and Trin. 43. El. Rot. 243. Wolf and Laffels Case, and El. 43. El. in C. B. Rot. 108. Mail and Ewers Case, both vouched there by my Lord Coke.*

Ch. 3. *Land-Lord and Tenant.* 117

If there be two Joyntenants for life, and one lets his part for years, rendering Rent and dies; the Term shall continue against the Survivor, but the Rent is gone, *M. 2* and *3 Eliz. Dyer. 187. Finch lib. 1. c. 3. p. 13.*

If a Man have a Lease for years, as Executor to *A.* and after purchases the Reversion of the Land in Fee, here the Lease is extinct, and yet it shall be Assets in the hands of the Executor per *W. borrowed and Hales. Bro. Extinguishment 54. Leases 63. Surrender 52. Co. on Lit. 338.* seems to be to the contrary.

If a Man that is a Lessor take to Wife a Woman, who is the Lessee, the Term is not drowned; but if the Master of an Hospital makes a Lease for years to *A.* and afterward *A.* the Lessee is made Master of the said Hospital the Term is drowned; for a Man cannot have a Lease for years in his own Right and a Freehold in anothers Right to consist together, but a Man may have a Freehold in his own Right, and a Term in anothers Right, as in the other Case, *Co. on Lit. 338. 6.*

Where the Lessor enters upon his Lessee and suspends the Rent, here he shall not be relieved in Equity, because it is against the Law, *Lambert Rep. fol. 49.*

A Copy-holder in Fee took a Lease, for years of the Manor; resolved the Copyhold was extinct for ever, and not only during the Lease. *Moss and Newport Case, Moore's Rep.*

If the Lessee be bound to pay his Lessor the Rent reserved on such Lease, and the Lessor enters upon all or part of the Land demised, so as the Rent is suspended so long as he keeps Possession; in this Case the Non-payment of the Rent during the time of the suspension thereof is no breach of the Condition. *Br. Oblig. Sheppard's Touchstone, p. 9391.*

It behooveth such persons as intend to make a For entry upon their Tenants to make a demand of the Rent, at the House upon the Land, if there be one, (if the payment be not appointed elsewhere by the Agreement of the Parties) where the Lessor himself, or his sufficient Attorney, a little before Sun-set in the presence of two, or three sufficient Witnesses, shall say, *Here I demand of R. A. ten pounds due to me at the Feast of St. Martin the Bishop last, for a Messuage Barn and twenty Acres of arable Land, ten Acres of Meadows, &c. which he holds of me on Lease by Indenture for twenty years, bearing date, &c. and so remain there upon the Land the last day that the Rent is*
duc

due to be paid, until it be such that one cannot see to tell the Money: But note, it may be covenanted between the parties that the Lessor shall re-enter without demand if both parties be so pleased, *Co. on Lit. f. 201. b. 49 Aff. 13. Noy's Maxims p. 183. Marb. Rep. p. 142. pl. 818. Hens. Lib. of Convey. p. 24. Reg. Pract. p. 89.*

But note this demand must be made at the Fore-door of the House, and not at the back door; for if it be it is not good, because the demand must be at the most notorious place, and it is not material whether any person be there or no; and if the Lessee be in the House, and the door open, yet the Lessor need go no farther than the Fore-door to make his demand, *49 Aff. 3. 15 El. Dyer f. 399. Parkin's case 838. Co. on Lit. 201. b. 153. s. 1. Hens. of Convey. p. 28.*

If there be no House, the demand must be made at the most notorious place of the Land, as at some high way leading through the same, or at some Stile or Gate which is most frequented; for if it be either at the back-door of the House, or some obscure place in the Land, it is a void demand, and the Lessor shall not take advantage thereof for Re-entry or breach of any Condition, *Dyer 139. Parkin's case 838. 49 Aff. 3. Co. on Lit. f. 202. s. 1.*

See a pretty Case in *Popbani Rep.* 58. upon a Lease of two Barns and the Lessor demanded at the one, and the Lessee tendered at the other, and it was held to be a good Tender to save a Fine every.

All the Rent be ordered to be paid in any place from off the Land, yet it is but Law a Rent, and the Lessor must demand it at the place appointed, observing the Rules aforesaid of the most notorious place, *Co. on Lit. f. 202. a. Pasch. 5 Jac. Knapp and Par Jewell's Case, 1 Brownlow p. 138. Trin. 5 Jac. Vane and Farmer's Case, ibid. p. 96. Pasch. 5 Jac. Dean and Chapter of Chichester's Case, ibid. p. 138. Tinkin and Edmunds Case, Murr. Rep. f. 107. on 1701*

But if the Lessee come to the Lessor at any place upon the Ground at the day of payment, and tender his Rent to his Lessor, this is good enough, and shall save the Condition, and the Lessor is bound to receive it, although it were not at the most notorious place, nor last instant of the day, for he may tender it at any time of the day, though the last instant be the legal time for the demand. But note, this Tender must be of the whole Rent without any deduction of Taxes, or Assessments, or other Charges, *Co. on Lit. f. 202. a. Perkins's Case. 837. Hens Law of Convey.*

then the Lessee his Executors &c. shall forfeit every day 1 s. 4 d. so much until the Rent be paid. In this Case the Rent must be demanded, or otherwise the *Writ* shall never be removed. *Trotter v. 36 Eliz. Thyn and Obolowsky Case, Goldsch. Rep. 186. Price v. Turner B. R. Sir John Spencer and Sir John Popham, Case, Goldsch. Rep. 154. Hill v. Fox B. R. 1793 in C. B. Sir Richard Ord and Sir Thomas B. Case, Hobart Rep. 7. Sir Mich. in Jan. in C. B. Rep. 1009. Hesel and Hesel Case, Hobart Rep. 11. 1793. in C. B. B. R. Rymer and Rymer Case, Style Rep. 11. 1793. and B. R. 1793. of*

It is to be noted upon Condition of Non-payment to recover; if the Lessor distrain he may not re-enter, but he may accept of the Rent, and yet re-enter, but if he receive the next Rent again, then he cannot re-enter. For what shall be the Lease. Entry also on a lease in the name of all is good, if the Land be all in one County, 38 El. Popham Case, 3 Co. 1. 65. 18 El. in B. R. Green Case, Leonard Rep. 262. March and Herbert Case in Ashmole Rep. and the same Case touched in Popham Case, Co. on Lit. 1. 111. 1. Popham Case 153. *Law of Conveyances* 1. 26, 27, 94.

And

And if a Lease for years be rendering Rent, with Condition that if the Lessee assign his Term, then the Lessor may enter, and the Lessee assigneth, and after the Lessor receiveth the Rent of the Assignee, not knowing of the Assignment; here notwithstanding the acceptance of the Rent, yet the Lessor may re-enter if he please, for the receiving Rent of the Assignee, he not knowing of the Assignment, bars him not, 3 *UEL. Penman's Case*, 13 *Car. 11. 63.* and *Murch* and *Turner Case*, before; and *Harvey* and *Oswald's Case*, *Mours Rep.* 101.

In a Lease for years, if the Lessee covenant that if he, his Executors or Assigns do alien, that then the Lessor shall re-enter, and afterwards the Lessee dies and makes his Wife Executrix, and she takes another Husband who alien; in this Case the Lessor may re-enter for the second Husband is Assignee in Law, 28 *H. 8. Dyer* 7. A lease which is only voidable, and not absolutely void, must be made void by the Lessors Entry, but if it be absolutely void there needs no Entry. 21 *Car. 11. B. R. 101.* *Pratt*, 101.

But note, though a Lease be made, that it shall be forfeited, if the Rent be not duly paid, as the lease doth provide; in this Case though the Rent be not paid accordingly,

dingly, yet there is no forfeiture to be taken, if there be not an actual and legal demand of the Rent. *Hill. 18 Jan. Rex. 2861. Hutton and Norcliffe's Case, and Pasch. 29 Jan. Rex. 2048. Joseph and Fallow's Case, Hutton's Rep. f. 231. Regis. Præf. p. 151.*

If a Lease be made rendering Rent on Condition that if the Rent be not paid within sixty days after such a Feast, that then the Lessor shall re-enter; and after the Rent is unpaid, in this Case the Condition is broken, but the Lessor cannot enter until he have made a legal demand of the Rent; and if he die after the Condition broken, and before a demand made, his Heir shall never take advantage of the breach of the Condition. *Dalt. and Stud. L. 2. c. 20. p. 35. 12 H. 4. 17.*

10. Debt upon a Bond for performance of all Covenants in an Indenture of Lease, where a Rent was reserved, it is a good Plea in Bar, that the Lessor made no demand; but it does not excuse the Covenant for the payment of the Rent, when there shall be a demand by the Lessor. *Pasch. 40 El. Rex. 106. in C. B. Speck's and Storer's Case, Moore's Rep. and Trin. 2 Car. 1. Rex. 483. Robinson's, Chapman and Chapman's Case, 2 Car. 1. c. 54. Pasch. 44 E. 4. 43.* *1202. 1203. 1204. 1205. 1206. 1207. 1208. 1209. 1210. 1211. 1212. 1213. 1214. 1215. 1216. 1217. 1218. 1219. 1220. 1221. 1222. 1223. 1224. 1225. 1226. 1227. 1228. 1229. 1230. 1231. 1232. 1233. 1234. 1235. 1236. 1237. 1238. 1239. 1240. 1241. 1242. 1243. 1244. 1245. 1246. 1247. 1248. 1249. 1250. 1251. 1252. 1253. 1254. 1255. 1256. 1257. 1258. 1259. 1260. 1261. 1262. 1263. 1264. 1265. 1266. 1267. 1268. 1269. 1270. 1271. 1272. 1273. 1274. 1275. 1276. 1277. 1278. 1279. 1280. 1281. 1282. 1283. 1284. 1285. 1286. 1287. 1288. 1289. 1290. 1291. 1292. 1293. 1294. 1295. 1296. 1297. 1298. 1299. 1300. 1301. 1302. 1303. 1304. 1305. 1306. 1307. 1308. 1309. 1310. 1311. 1312. 1313. 1314. 1315. 1316. 1317. 1318. 1319. 1320. 1321. 1322. 1323. 1324. 1325. 1326. 1327. 1328. 1329. 1330. 1331. 1332. 1333. 1334. 1335. 1336. 1337. 1338. 1339. 1340. 1341. 1342. 1343. 1344. 1345. 1346. 1347. 1348. 1349. 1350. 1351. 1352. 1353. 1354. 1355. 1356. 1357. 1358. 1359. 1360. 1361. 1362. 1363. 1364. 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N. mortgages his Lands to H. upon Condition that if such a Sum of Money be paid such a day, that then it shall be lawful for the Mortgagee to re-enter before the day the Mortgagee is attainted of Treason; and all his Lands come to the Crown; now in this Case the King need not make a Tender of the Money upon the Land, but the Mortgagee must demand it at the Exchequer: *Hill. 43. Elin. Sir Richard Broun's Case; Golden Rep. 9. 137. pl. 42. but see Hume 72.*

If a Lease be made rendering Rent at two Feasts in the year; and if it be behind for the space of a Month after any of the said Feasts, it being lawfully demanded, then the Lessor in distress; in this Case if the Rent be owing by the space of a Month after either of the Feasts, the Lessor may distress though he make no demand actually, for the Distress is a sufficient demand, *Trin. 16 Jac. in G. B. Kent and Spence's Case; Hutton Rep. 23. See M. & C. 11. in G. B. Land and Wife's Case; Hill. 42. 137. and M. & C. 11. in C. B. Sir Thomas Wynn's Case; Hutton 42.*

If one lease Lands rendering Rent for 9 years, whensoever the Lessor shall demand it in this Case if the Lessor come and demand it before the end of the year, his demand upon the Lands is not good, unless the Lessee

be there at the time of the demand, for the time being uncertain when the Lessor will demand it, he ought to give the Lessee notice of it. And if the Lessee come to the Lessor in person and demand the Rent, yet it is not sufficient, for although notice is to be given to the Lessee in person, yet the Land is the Debtor, and therefore the Law ties the Lessor to the Land, and to the place in which he shall be paid: But if the Lessor stay until the end of the year, then the Lessee at his peril ought to attend at the Land to pay it, for the end of the year is the time of payment prescribed by Law, *Per An. Tac. in ult. Re. de Decimis* 235, 236. in 214211

A Lease for years was made upon Condition, that at such time payment of the Rent should be made: A Man of evil fame called in forty Shillings, but the last instant of the day demanded the Rent: the Lessee asked him what he meant, he said to receive it, he said he was sent by the Lessor: but did not show any Warrant for such, so that he was his Servant: and all this being known before the Justices and the Records of the Court were produced, the Justices thereupon dismissed the Lessee, and ordered that the Lessor should not enter upon him upon this demand: *Vide ubi. Man. Reg. 2139*

Debt

Ch. 3. Land, Lord and Tenant. 327

Debt was brought by the Lessor against his Lessee for years, for a Rent behind during the Term, and the Defendant pleaded a Release made by the Lessor six years before the Rent was arrears, of all demands; and it was adjudged a good Bar. Trin. 16. Jac. in B. R. *Wootton and Ayer Case*, 1. *Brownlow Soc. v. Butcher, Glover, and Haynes Case*, 18. Car. 2. in B. R. 1. Feb. 1681, it was held that a Release of all demands shall not discharge or release such a Rent reserved upon a Lease for years. *Innomos nom. v. Galt*, 11111111.

A Man made a Lease for years, reserving Rent at Michaelmas, upon Condition that it should be paid a Month after the Feast that Michaelmas came. The Lessee after Michaelmas first before the March was out, sent his Servant to the Lessor's House to pay the Rent, who paid it to the Lessor's Daughter, her not being at home, for her Father's sake, she having several times before received it and paid it to her Father, who had formerly accepted it, but now refused to accept it, and called for non-payment, and all this appearing to the Court, and that the Lessor had an intent to defraud the Lessee of his hire, and the Law doth otherwise of Force, therefore it was adjudged against the Lessor. *H. 8. 11. in B. R. Corp. Case*, *Griffiths Rep.* 28, 320 and 11111111.

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And if a Man make a Lease for years ending
 Here at such a Feast, and it is to be behind
 by the space of ten days after, and no suffi-
 cient Distress be laid upon the Land;
 then the Lessee is to enter: In this Case if
 the Distress be put upon the Land only for
 an hour, or such a thing, or by night, so
 as the Lessee cannot come to distress, such
 a Distress is not sufficient: but the Lessee
 may recover, *21. 22. Elizabeth II. R. & Gold-
 smiths Rep. 67.*

Limitation is most commonly taken for an
 Assignment of a certain space or time with-
 in which he shall sue for any Lands or
 Hereditaments, or be answerable in any Suit, or
 against any Assize, Treason, Death, Detinue,
 Tresspass, Rape, Adultery, and Battery, &c.
 he shall prove that it is within the time li-
 mited by Statute; or otherwise if the other
 party plead the Statute of Limitation to the
 Action, and it do appear upon the Evi-
 dence, that the cause of Action was not
 within the time there mentioned, then the
 Plaintiff is barred of his Action, *Vide 32 H.
 8. c. 2. 10. M. 1. Per. 1. Sess. 1. 21. Jan.
 1603.* Now as there is a Limitation of time for
 the commencing of Actions, so there is also
 Effusion upon Limitation, as limited Estates,
 and the most apt and proper words to make
 a Li-

Ch. 3. Land-Lord and Tenant. 129

a Limitation of Estate, are *Durante, Dummodo, Dum, Quamdiu, Donec, Quousque, Usque, &c.* As if *A.* grant Lands to *B.* to have and to hold to him, &c. *Donec B.* go to Rome, or until he be promoted to a Benefice, or *Dummodo* the Lessee pay 20 *l.* or a Lease to a Woman *Dum sola fuit*, or *Durante viduitate*, all these are words of Limitation, which determine Estates without Entry or Claim, Co. on *Lit. f.* 234, 235. *Plowd. Com.* 413. *Dyer* 290. *Sheppard's Touchstone*, p. 125. *Horns Law of Conveyance* p. 12, 45.

If a Lease be made to *A.* for 41 years if he live so long, and if he die within the aforesaid Term, that then the Wife of the aforesaid *A.* shall have it for the residue of the said years, this Limitation is void: for if *A.* dies, the Term ends, and nothing remains to the Wife, *Tr. 8 Eliz. Cecil's Case, Dyer* 253. and *vide Pl. Com.* 190.

If a Man have an House for forty years and devise the House to *J. S.* without limiting any Estate, the Devisee shall then have the Intire Term, for he may not have for life, nor at Will, nor for lesser Term of years, *Pasch 14 Eliz. Dyer* 307.

But if a Man be possessed of a Term of 30 years, and grant so many of them as shall be behind at his death, this is void
for

for uncertainty, for he may live till all be out, and then nothing remains, *Bra. Leaſes* 66. and *Grants* 154.

If a Lease be made to A and C. for their Lives, and after their Lessor grants the Reversion to C. for his life, to which Grant A. attorns, and after by his Deed surrenders to C. all his Estate and Interest and dies: in this Case C. may enter and hold in common with B. 43 *El. Totten's Case*, *Co. Rep.* f. 39.

Note. There needs no Livery and Seisin to be given upon a Lease for years, but the Lessee may enter when he will; and if there be Livery and Seisin upon such a Lease, yet the Livery is void, and the Lessor shall have but an Estate for years; but if there be a Remainder granted over to another in Tail, or in Fee, or for Life, then there must be Livery given to the Lessee for years, or otherwise nothing passes to him in Remainder; and if the Lessee enter into the Land before Livery and enjoy, then the Lessor cannot make Livery to him after his Entry, for he is then in possession, and Livery cannot be made, to one in possession, *Lit. Tenures* f. 13. a. and *Co. on Lit.* f. 49. b. *Hern's Law of Conveyances* p. 25.

A Man makes a Lease for years and after makes a Deed of Feoffment of the same Land, and delivers Seisin, the Lessee being
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in the House at the same time, when the Lessor gave Seisin in a Close parcel of the Premises, and not knowing, nor assenting to it, this Livery is void: for though the Lessor have the Freehold and Inheritance in him, yet the possession is in the Lessee, and Livery must be given of the Possession: But if the Lessee be absent, and hath neither Wife nor Servants (though he have Cattle) upon the Ground, then the Livery shall be good, 53 *Ed. in C. B. Dittisford's Case*, 4 *Co. l. 31.* *Mum. Rep.* the same Case, *Co. on Lit. l. 48. b.*

An Attornment is the Agreement of the Tenant, to the Grant of the Seigniorie, or of a Reversion, or the Agreement of the Donor in Tail, or of Tenant for life or years, to a Grant of a Reversion or Remainder made by the Donor or Lessor to another. As where he that hath an Estate in Reversion or Remainder after an Estate for life, or years, doth grant or give the same away, here the Tenant of the Land must give his consent to such Grant or Gift, or else generally the same is not good, and this yielding of consent is called an Attornment. And it is either Actual or Verbal, or Actual and Verbal both. That which is Actual, is either implied and in Law, or expressed and in Fact, of all which here are some Examples

ples following, *Termes de la Ley Attorn-
ment*, Co. on *Lit.* f. 309. pl. 25.

To the making good of an Attornment,
where it is requisite, divers things are re-
quired. 1. It must be made by the person
that ought to make it. 2. It must be made
to the person that ought to take it. 3. It
must be made in due time. 4. If it be an
expres Attornment, the Tenant must have
notice of the Grant of the Reversion, &c.
to which he shall attorn; but if it is other-
wise of an Attornment in Law, the like
notice in all Cases is not necessary. 5. It
must be done in such manner as the Law
doth prescribe. Now as to that observe, that
it may be made either by Words or Deeds
without Writing, or by Deed or Writing,
and thus is the likeliest way to do it: And
any Word written or spoken by the Tenant
(after knowledge of the Grant of the Rever-
sion, &c.) which doth import an Assent and
Agreement thereto, will make a good Attorn-
ment in Fact or in Deed; as if he say to
the Grantee, *I do attorn*; or *your Tenant*
to you according to the Grant; or *I become*
your Tenant; or, *I agree to the Grant*; or
I am well content with the Grant; or, *God*
send you good joy of it; these are expres
Attornments. And if after such know-
ledge of the Grant, the Tenant pay, do, or
deliver

deliver all, or any part of the Rent or Service, before or at the time when the same is due to the Grantee, though it be but a Penny or a Farthing, or any other valuable thing in the name of Attornment, or in the name of Satisfaction of the Rent; this is a good express Attornment, and is best of all when it is made by Words and Deed or sign both, for then the Witnesses will best remember it, *Co. on Lit. f. 302. 310. 315. Pl. Com. 344. 49 E. 3. 35. Lit. Tenure 110. s.*

Where Attornment is necessary, it must be made in the life time of the Parties Grantor and Grantee, for if either of them die before the Attornment be made, the Grant is void; but if the Tenant die before he attorn, he that hath Estate, may attorn and it is good, or if the Tenant grant over his Estate, his Assignee may attorn, *Co. on Lit. f. 315. s. Perkins sect. 251. 263. Lit. Tenure 110. & Co. 4 Rep. f. 8. 6 Rep. f. 57. 9 Rep. f. 34. Trin 18 E. 4. f. 10. s. Vide May's Maxims, p. 65.*

If a Lease be made of a Reversion to begin at a day to come; in this Case the Attornment may be made before or after the day, so it be but made in the life time of the Parties as abovesaid, *2 Co. f. 35.*

In these Cases following, Attornment in Law or in Deed is absolutely necessary;

viz.

one where one doth make a Lease for life or years to one, and after doth grant the Reversion or Remainder after the same Lease ended to another by Deed in Fee Simple, Fee Tail, or for life, in this Case the Lessee for life or years must attorn to the Grant of the Reversion, &c. otherwise it is worth nothing, Co. on *Le. f. 116.* and *1. C. 106.*

So where the Lord of a Manor doth make a Feoffment of his Manor, in this Case the Services of the Tenants will not pass without their Attornment, *6 C. f. 68. Doct.* and *Straw. 1. 1. f. 35.*

And if a Reversion be granted after an Estate of Tenants by Statute Merchant, Staple, or Broke, after an Estate that any one hath till Debt be paid, or the like, in these Cases these Tenants must attorn, or the Grant will not be good, Co. on *Le. f. 315. A. Bro. Aitors. 48.*

If one make a Lease for years of Land rendring Rent, and after grants the Reversion to another for years, to begin after the death of the Grantor; here it is needful that the Lessee for years in possession do attorn to make the Grant good; But if one make a Lease of his Land to one for ten years, and after make a Lease to another for twenty years, to begin after the ten years are out; this is good enough without Attornment,

count, 2 Co. f. 35. *Partly Bro. Sect.* 198.
Ca. on Lit. f. 312.

If a Lord exchange the Services of his Tenant with another for Land; in this Case the Attornment of the Tenant by whom the Services are to be done is necessary to perfect the exchange. *Perkins fol.* 59.

Where the Wife who attorn the Husband must do it for her, and it shall bind her, whether the Attornment be expressed or implied, Ca. on Lit. f. 312.

Note. There is a Maxim in Law, *That no Man shall attorn to any Grant of any Seignior, Rent Service, Reversion or Remainder, but he that is immediately next to the Grantor*: As if there be Lord and Tenant, and the Tenant make a Lease for life, or a Gift in Tail of the Land, and after the Lord grants the Services to a Stranger; in this Case the Tenant himself, and not the Lessee for life, or Donee in Tail must attorn; but if it had been a Grant of a Rent Seck or Rent Charge, issuing out of the Land, then the Under-Tenant for life, &c. must attorn, Ca. on Lit. fol. 311. 4.

If one make a Lease for years of Land, the Remainder for life, and after the Lessor doth grant the Reversion to another; in this Case either Lessee for years, or Tenant for

for life may attorn, and it is good enough, Co. on Lit. f. 316, 317.

If a Man make a Lease for life to J. S. of Land, and after grant a Rent Charge out of it to J. D. who after grants over his Rent to another, here the Lessor himself and not J. S. must attorn, Co. on Lit. 312.

If Lessee for life assign over his Estate upon Condition, and then the Lessor grants over the Reversion, in this Case the Assignee and not the Lessee must attorn, Co. on Lit. f. 316. 21 H. 6.

If the Lord of a Manor make a Lease of his Manor for life or years, and the Freeholders and others do attorn to the Lessor, and after the Lord grants the Reversion, in this Case the Lessee for life or years must attorn, and it shall bind all the Freeholders, Co. on Lit. f. 311. 21 E. 1. f. 4.

If many Joyntenants hold by certain Services, and the Lord granteth the Services to a Stranger, and one of the Joyntenants attorneth to the Grant, the same is as good as if all had attorned; but it is otherwise of a Rent-Charge, for there all the Tenants of the Land charged upon the Grant of the said Rent, ought to attorn to the Grant, for the Ter-Tenant must attorn, and one of them is not Ter-Tenant, *Mich.*

33 El.

33 *Elm in R. Lancaster and Leeds Case,*
Windsor v. B. 341. 1109 21 2111 211111

A Lease is made for life, the Remainder
 to another in Fee, the Infeoffment grants
 over his Estate to another, of which Grant
 Tenant for life having notice, the said to
 y. 1111 and C. D. two Stringers that he was
 pleased that the Grant was made to, &c.
 (making void by his Male) for he was his
 Cousin, and this was held to be a good At-
 tornment, though the words were spoken to
 those who were meer Stringers to the
 Grant; for it sufficeth that the Tenant had
 notice of the Grant and assents thereto,
 for it is not necessary to attorn to the Grantor
 himself: If the Tenant had indorsed his
 hand as a Witness to the Deed, knowing
 what it was, it is a good Attornment, Co.
 on *Lit. f. 310.* and *9 Co. f. 89.* and *Hill v.*
and Bonbridge's Case, 2 T. 1111 1. Car. 11. in
B. R. 1111 388. and also but not to view
 to A voluntary Attornment where it is need-
 ful, may be made by an Infant or one that
 is deaf and dumb may do it by signs, but
 one that is not *comp. 1111 1111* cannot make
 an Attornment, Co. on *Lit. f. 315.* *1111 1111.*
1111 1111 C. B. 1111 1111 Case, 9 Co. f. 84.
 An Attornment ought to be certain, for if a
 Reversion be granted for life, and afterwards
 it is granted to the same Grantee for years,

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and the Tenant attorneth to both the Grants, this is void for uncertainty, *File Co. on Lit. f. 321. 32 H. 6. 3.*

In all Cases for the most part where there is no means provided by Law to compel the Tenant to attorn, in such Cases their Attornment in Deed or in Law is not necessary, unless there be some special default in the Grantee: And therefore in such Cases following Attornment is not necessary, as where one doth grant a House, Reversion, Remainder, Service, or Sovereignty to another by way of Deed, by a last Will and Testament: or by Letters Patents from the King, or where such things are granted by matter of Record from a Subject to the King, in such Cases there need no Attornment, *F. N. B. 131. M. Co. on Lit. 314, 321. and 6 Co. f. 11. 32 H. 6. 3.*

So when the thing granted is held by way of use, and vests by force of the Statute of Uses: As if one that is seized of Land in Fee doth make a Lease of it for life or years to J. S. and after leaveth a Fine, or doth covenant to stand seized of the Reversion of this Land (or of the said it self, which is all one) to the use of another, or doth bargain and sell the Reversion in Fee, or for years; in these Cases the Tenant need not attorn, *Co. on Lit. f. 321. Sir*

Rowland

37 E. 3 Co. f. 35. 272. B2. 1. 1110

So when one doth come to any Rent, Reversion, Remainder, Service, &c. by Title or Signiory Paramount, as by Escheat, Surrender or Forfeiture, or by Descent, in all such Cases there needs no Attornment, either to pass the Estate, or make a privy to distrain or bring an Action of Debt. Therefore if Lessee for life of a Manor surrender his Estate to the Lessor, there needs no Attornment of the Tenants of the Manor, to make this Estate to pass. Or if the Reversion of a Tenant for life be granted to another in Fee, and the Granter die without Heir, so that the Reversion Escheat, in this Case the Lord may distrain, or bring an Action of Waste, &c. without any Attornment. So if a Reversion deferred to an Heir from his Ancestor, here it will vest in the Heir without Attornment: So if the Conuisee of a Statute Merchant, &c. extend a Signiory or Rent for Debt, it shall vest in him without Attornment. *Co. on L. 1. c. 328.*

[illegible]

If one lease for life, the Remainder for life, and after the Lessor releases all his Right in the Land to him in the Remainder for life, this is good enough without the Attornment of Tenant for life to him in Re-

maiden, and the Release is purchased without it, *Lat. Sess.* 575.

In all Cases where the Grant is in the personality there needs no Attornment; and therefore in Grants of Annuities, which do charge the person of the Grantee only, and not the Land, there needs no Attornment; and in all Cases where there is an Attornment in Law, there needs none in Deed, *M. 3 Jac. in C.B. argued in Cornhill Case.*

Now, Where there is no Tenure, Attendance, Remainder, Rent or Service to be paid or done, there Attornment is not necessary. Therefore if one hath Common of Pasture for a certain number, or Common of Enowen certain, and grants them over to another, they pass without Attornment, *31 H. 8. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

An Attornment made after the Statute is not good, for an Attornment is a solemn act, and ought to be done in that manner that be taken of it, which shall not be presumed to be in the night, *M. 23 Car. 1. in B. R. 1644. Arg. 7. 10.*

The Statute of 23 H. 8. c. 15. gives liberty and power to all the Recoveries that shall be had against the Tenant of the Feehold through their own conveyance, intending thereby that their Lessor shall be satisfied of their Fines before there Terms be out;

outs when as perhaps they paid a great Fine at their Inclosure, and so it were an hard Case, if they should be ousted from their Farms, upon such Recoveries by Collusion and Fraud, Co. on Litt. 49. a. *Replew Recoveries* 371. a. *Wingate* 469. Stat. p. 405. Co. a part last. f. 322.

It is a Lease be made by the Tenant
Several Estates for Years, Commencement
and Determination of Leases

Several Estates for Years, Commencement and Determination of Leases
of Leases
In this book we have seen of these several Estates for Years, some be good in Law, some voidable by Error, and some void with out force to them, and some in part void of all which there are several Examples in this shall Treatise, Cases 145. f. 145.

It is a Lease be made, dated the third of April, 1555, and so hold for three years from henceforth, or from the making, and it is delivered the twentieth day of June after, in this Case the day of the delivery must be taken in dispute, and shall be the first day of the Term, and the Lease shall end the nineteenth day of June in the third year after. But if it be so begin, as to

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diem, or *a die Confectionis*; then the Term shall begin the day after the delivery, and the day it is delivered shall be exclusive; and so note the diversity, Co. on Lit. f. 46. b. 37 El. in *C. B. Clayton's Case*, 5 Co. f. 93. *Burwell's Case*, 39 El. in the Exchequer, *Noy's Maxims* p. 66. *Horus Law of Conveyances*, p. 14, 15. 12 El. Dyer 286. and 14 El. Dyer 307. *Mish.* 10 Car. 1. in B.R. *Bull and Wyatt's Case*, 11 Cr.

If a Lease be made bearing date the first of January, 17 Car. 2. to have and to hold for a certain Term of years, from the date of the Indenture aforesaid, and is delivered the same day, here the day shall be taken inclusive; for the day is the time of the delivery, and it differs from the time of day of the date, as in the last Case before mentioned, 14. 15 Jac. in B.R. *Osborne and Rider's Case*, 2 Cr. 135.

If an Indenture of Lease bear date the 30th of February or 29th of March, which is impossible, in this Case if the Term be limited to begin from the date, it shall then begin from the delivery as if there had been no date at all, Co. on Lit. f. 46. b. and see *Goddard's Case*, 16 El. 2 Co. f. 9. *Horus Law of Conveyances*, p. 111, 132.

If the Habendum of a Lease be for Term of one and twenty years, without mentioning

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ing when it shall begin, it shall then begin from the delivery, Co. on *Lit. f.* 463. *Horns Law of Conveyances* p. 15, 131.

Habendum is a word of term in a Deed of Conveyance, and its Office is to limit the Estate, and to explain the Premises, and to give, to enlarge, and to be perusing to the Estate contained in the Premises of the Deed; but it must not be repugnant, nor contrary, nor exclude any of the Interest before given in the Premises; for if it doth the present Estate given by the Premises shall stand, and the *Habendum* shall be void. As if a Feoffment be made to one and his Heirs by the Premises of the Deed, *Habendum* to the Lessee for Term of his life. Now these Words of Duration do not take the Fee-simple & Heirs, nor void Words, because the *Habendum* is repugnant to the Premises, 31 *Edw. 3. Balcanquhall Case*, 2 Co. 5. 31. *Noy's Maxims* p. 55. *Horns Law of Conveyances* p. 1, 2, 131.

Sometimes the *Habendum* doth controul and qualify the general Implication of the Estate, which passeth by construction of Law, by the Premises of the Deed, as for Example, A Lease to two, *Habendum* to one for life, the Remainder to the other for life, this Limitation doth alter the general Implication of the Jointenancy which

240 The Laws touching Ch. 40
would have been without the *Habendum*
and yet the *Habendum* is good. 2 Co. 330
Mar 43.

Two Acres be given to two *Habendum*
the one Acre to one and the other Acre to
the other, this is a void *Habendum*, because
it excludeth the interest of the one in the
one Acre, and of the other in the other Acre,
whereas the Purposes of the Deed, hath
made them Joyntresse of every parcell
Here Deed of Gift, and the word void

But if Land be given to two *Habendum*
the one Morsie shewed to the one, and the
other Morsie to the other, the *Habendum*
is good. *Feoffment and Writ of Case*, 11 H
4. 27. till go to one, and one of each

the *Habendum* sheweth all *Habendum* with
him for one hundred years, and *Habendum*
to him, and his Assigns for one hundred
years, there are no good Leases, if their
Worsh were *Habendum* to his Executors,
Administrators and Assigns for one hun-
dred years. So if a Lease be made to a

Habendum to him and his Heirs for one
hundred years, this is a good *Habendum*,
and the Word *Heirs* is void, for it shall go
to his Executors, &c. Also where Land is
granted to a *Habendum* to him and his
Successors for one hundred years, this is a
good Lease, and the Word *Successors* void,

Barrow

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If a Lease be made for twenty one years, and after another Lease is made to commence from the end and expiration of the first Term of years, and afterwards the first Lease is surrendered: In this Case the second Lease shall commence presently upon the Surrender; but if it had been made to commence from the end of the said one and twenty years: then though there had been a Surrender, yet it should not have commenced till the Term had been out, and so note the diversity between *Termes Antient* and *Termes Antient*. Co. on, *Est. f. 45. b. Henr. Law of Conveyances* p. 195. *Co. f. 34. b. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

It is also said in *Lease in Fee*, and doth mean that when a man gives a lease for a certain time from that time he shall have and occupy the Land for one and twenty years, and after B. pays the 20 s. this is a good lease for one and twenty years from that time, notwithstanding the Rule of *Seisin*, that every lease must have a certain day, place, and a certain ending, for as every man of good sense will say, *Co. on* *Est. f. 45. b. Henr. Law of Conveyances* p. 195. *Co. f. 34. b. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

So if a man make a Lease to another for a certain time, and A. shall pay, this is a good lease, for as every man of good sense will say, *Co. on* *Est. f. 45. b. Henr. Law of Conveyances* p. 195. *Co. f. 34. b. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

So if a man make a Lease to another for a certain time, and A. shall pay, this is a good lease, for as every man of good sense will say, *Co. on* *Est. f. 45. b. Henr. Law of Conveyances* p. 195. *Co. f. 34. b. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

for so many years as he names, if he name them in the life-time of the Party-Lessor, See *Sey and Fuller Case, Plowd. Com. f. 273. H. 8. 11. Ca. on Lit. f. 45. b. Kitchin p. 235. b. and Sheppard Touchstone f. 274.*

If A. make a Lease of his Lands to B. for so many years as B. hath in the Manor of Sale, and B. hath a Lease for ten years in it; this is then a good Lease to B. of the Lands of A. for ten years, *Ca. on Lit. f. 45. b.*

If a Lease be made to one for so many years as his Executors shall name, this is void for the uncertainty, *Ca. 155. m. 1.*

And if a Parson make a Lease of his Glebe for so many years as he shall be Parson there, this is a void Lease for the uncertainty, for *Terminus vite est incertus, licet nihil certius est morte, nisi tempore incertum est hora mortis.* But if they make a Lease of his Glebe for three years, and so from three years to three years so long as he continues Parson, this is a good Lease for six years, if he continue Parson so long; and void for the Remainder, *Ca. on Lit. f. 45. b. H. 26. E. 1. 235. in C. R. Pl. Com. f. 27. Sheppard Touchstone p. 274. m. 1.*

If a Lease for years be made of Tithes by Parol or Word of Mouth to a Stranger, it is

to void: But the Parson may discharge a Parsonage of his Tythes by Parol, or by the Rectory consisting of One and Tythes so granted by Parol for years, and it shall be good: See the reason hereto, pag. 2. *Mich. 2 Car. 1. Rot. 179. Bellamy and Baitbry's Case in Easter Ray. 1. 1796.*

Two Covenants in Tail, the Husband of one of them, being Tenant by the Countess jointly with the other in a Lease, reserving Rent to them two and their Heirs: this is no good Lease by the Statute of 30 H. 8. of Estates Tail, because it is not reserved to the Wife and Heirs, but to the Tenant by the Countess jointly with the other; and the Rent shall be taken jointly as it is reserved by the Letters. *29. 3 Car. 1. Thomas's Case, Easter Ray. 49.*

If a Lease made for three years, and so from three years to three years during the life of Rent, this is a good Lease for six years; and if the Tenant pay nothing he is then but Tenant at Will, and after Entry made by the Lessor, Trespas lies against him: but if Livery and Seisin be given upon it, albeit it be granted Lease for the life of Rent. *Mich. 2 Car. 1. Rot. 179.*

If a Lease be made to A. B. to have Land to hold the Land till so many pounds be paid, and make no Livery of Seisin, he hath

hath then in Estate but only at Will, and may be put out at pleasure, but if Livery be given, he hath an Estate for life, upon Condition annexed to cease upon the payment of the hundred pounds, 33 *Ass. n. 2.* 2 *Mar. 1. Bro. Leases 87.* *Co. on Lit. 42. n. 1.* *Sheppard's Touchstone 270.*

A Lease from year to year, so long as both Parties please, it is a good Lease after Entry in any year, for that year, till warning be given to depart, 14 *H. 8. 16.* *Joy's Max. p. 66.* *Bro. Leases 13, 27.*

If a Lease be made to A. and his Assigns, to have and to hold to him during his life, and during the lives of B. and C. this is a good Lease for his own life, and the lives of B. and C. and the Survivor of them. But if a Lease be made to T. S. of Land, to have and to hold to him during the time that A. and B. shall be Justices of the King's Bench, or during the time that A. and B. shall be of the Inner Temple, in these Cases the failure of one doth determine the Estate, 41 and 42 *Eliz. B. R. Ross's Case, 5 Co. 73. 2.* *Hutt, Elem. of Contracts 7. 12.*

If a Lease be made to A. during the lives of B. and C. without saying, *And to the Survivor of them*, if one of them die, yet the Estate is not determined, but he shall have the Land during the life of the

Survi-

Survivor; or if a Lease be made to A. and B. during their lives, though there be no mention made of the longest liver of them, yet the Lease notwithstanding shall continue during the life of the longest liver; But if a Lease be made for an hundred years, if A. and B. live so long, in this Case, if either of them die, the Lease is determined, 34 *Edw. 2. R. R. Braden's Case*, 5 Co. 1. 292. *2. Brownl. p. 392. Saggard's Touchstone* p. 107. *Hughes and Grouthers Case*, Trin. 6 Jac. 1. *Brownl. 180.*

If a Lease be made rendering Rent to one and his Heirs, or rendering Rent to one or his Heirs, it is all one, and either way good; But if a Feoffment be made *Tenementum* to one or his Heirs, he hath then an Estate but for his life, 42 *Ed. Melton's Case*, 5 Co. 111. *Horns Law of Conveyances* p. 148.

If a Lease be made to B. only, to have and to hold to him and C. for their lives; by this B. hath an Estate for his own life only, and C. hath nothing at all, *Saggard's Touchstone*, p. 108.

If a Man make a Lease to commence after the end or determination of a former Lease in eff: and after the first Lease is out, and the second Lease cometh not, but he in the Reversion enters, and makes a Feoffment, and levith a Fine with Proclamacion, and

five years pass without Entry or Claim of the second Lessee; here in this Case the Fine bars him: for the Statute of 4 E. 7. c. 24. doth speak of Interest and a Lease for years is an Interest within the meaning of the Statute, 9 Jac. in C. B. *Saffar Case*, 5 Co. 123.

An Infant, seised of Land held in Socage, may by Custom make a Lease at his Age of fifteen years of the same Land; this is good, and shall bind him, *C. on Lit. f. 45.*

If Tenant in Tail make a Lease for years according to the Statute rendering Rent, and die without Issue; now to him in the Reversion the Lease is void; but if he endow the Wife of the Land it shall be good against her; or if the Tenant in Tail die without Issue, his Wife being with Child, and he in Reversion enters and ousts the Lessee, and after the Wife is delivered; in this Case the Lease is again revived, although it were once void by the Entry of him in Reversion. So if Tenant in Fee-simple take a Wife, and then make a Lease for years and death, and the Wife is endowed of the same, in this Case she may avoid the Lease but after her death it shall be in force again against the Heir. So now a Lease may cease for a time, and revive again, 10 E. 3. 26. 34.

15. 23 K3. Power 30. Caon Dr. 16.
Shaper in Touchford 1. 275.

If an Husband have a Term of Years in Right of his Wife, if she die it remains to him, but if he die it remains to her, without the dispose of it in his life time, and his Executors shall not have it, Pl. Cas. 119

At 26, 27 El. admitted in open Courts in
for Answer and Lodging, and P. 21. The
Rat. 1916 C.B. Young and Rayward Call
Hobart's Rep. f. 3. Ch. on Ld. 40. 3. 35 R. 4

If a Man lease for life to J. S. and the next day leases to W. B. for twenty years this second Lease is void. If it be not a Grant or a Reversion with Attornment for by Law the First is more permanent and worthy than a Lease for Years and yet if the Lessee for life die within the Term, the Lease for years is good for the Remainder of the years then to come. 17 H. 8. Br. Leases 48 to the end.

It is a Feine Copy holden in the Court in
Parliament, who makes a Law for years, con-
trary to the Custom: after the Husband
deads this Forfeiture shall not land the
Feine and her Heirs: but she shall have
nothing after her Husbonds death nor
the Forfeiture, and so it was adjudged here
before and since in the Exchequer, 1 Car.
1. 7. Pasch. 1 Car. 1.

If

If a Man be possessed of a Term of years in Right of his Wife, and make a Lease thereof to another, for part of the Term to begin after his death, this shall bind the Wife after the Husbonds death, and the Lessee shall have it during his Lease, if the Wifes Term last so long, and the Executors of the Husband shall have the Rent during the Lease of the Husbonds Lessee; but if any thing remain of the Term after such Lease be out, then the Wife shall have it, if the Husband made no disposition of it in his life time, *M. 35. Elix. in B. R. Popshams Rep. f. 5.*

If a Man and his Wife be seised of a Term in the Right of his Wife, and the Husband bring an *Assize* in his own Name, and doth recover the Term and die, in this Case his Executors shall have it, and not the Wife, because the Recovery in his own Name did vest the Term in himself, *Ca. on L. 1. f. 26.*

If Tenant in Tail make a voidable Lease for years and die, his Heir in Ward to the King or other Lord, the Lord shall avoid this Lease, but this avoidance is but during the Interest of the Lord, for the Heir by acceptance afterwards may make it good, *29. Elix. Earl of Devonshire Case, 7. Cou. 7.*

If

If a Man licence another to enter and occupy his Land for seven years, this is a good Lease for the same Term in Law, but if one licence another to enter and sow his Land, this is no Lease, but the Owner of the Land may reap the Corn if the other sow it, 21 H. 6. 37. 5 H. 7. 1. 10 E. 4. 4. 2 Brunsd. 250. *Hobart Rep. f. 35.*

If a Man lease for 60 years, and so from 60 years to 60 years, during 100 years, and until 100 years be ended, this is all the same Lease, and good for the Term *Pitard Cases f. 272. 29 H. 8. Bre. Leases, 49. See pards Touchstone, p. 270.*

A Lease made for 1000 Days, Weeks or Months, is as good for as long as it cometh unto a Lease for a hundred or a thousand years, *Finch Let. 207. p. 47. 24 H. 8. f. 230. 6 Co. f. 72.*

If I say to J. S. being in my House, (here J. S. I devise to you my House and Land so long as I live) this is a good Lease to him for my life, if Livery and Seisin be given: *Ex. sic de feoffment, 6 Co. f. 128. See pards Touchstone p. 270.*

If a Lease be made to me for my life and for ten years after my death, this is a good Lease for life first, if Livery and Seisin be given, and then a good Lease for ten years after my death, which my Executors

shall have: and though no Livery and Seisin be given, yet it seems it is a good Lease for the ten years after my death. *Br. Lease* 27, 94 *Sheppard's Touchstone* p. 270. a 10d.

A Man purchased Lands of him and his Wife and their Heirs, and afterwards (without his Wife) he leaseth the Lands for sixty years to another; if they two lived so long, then the Husband dies, and the question was whether this Lease should bind the Wife by 32 H. 8. cap. 28. she being no party to the Indenture: And *Yelverth, Marry and Crank* were of Opinion that it did bind the Wife. *Mitch. 1 Cor. 1. Smith and Tinter. 1*

shall Case, 1 Cro. f. 15, 16. If a Man have a Lease, and dispose of it by his Will, and afterwards before his death surrenders it, and takes a new Lease, and then dies: here the Executors, and not the Devisees shall have this Lease, for their Surrender was a Countermand of his Will. *Tr. 30 El. C. B. Ashby and Lovers Case, 1 Goldb. Rep. p. 93. and pl. 6.*

A Lease was made by a Man for 80 years if his Wife live so long; and if she die, then the Son should have the Land for the Remainder of the Term: this Remainder to the Son was adjudged void; for if the Wife die, the Term is gone and nothing remains. *Green and Edwards Case, Mr. Ashby's Reports*

p. 93. p. 419. and Price and *Alutrin* Cafe
p. 242. L. 1053.

If a Man have a Lease for 500 years it is but a Chattel, notwithstanding the long time, (and shall go to the Executors, 3a/L Affix it.)

A Lease for years though it be never for long cannot be entailed, for the nature of a Chattel cannot be turned into an Inheritance. *Hill vs. Cottrell*, 2 B. & P. 281. 1757. 107. 3d ed. 2d ed. 2d ed. 2d ed.

A Lease for life or years, and a Release
amounteth to a Fee-fine; As if I let
Land to a Man for life or years, and after I
release to him all my Rights, which I have
in the Land, without using any other
words in the Release than that he hath but
only an Estate for life; but if I release all
my Right in the Land to him, so have and
to hold to him and his Heirs, hereby he
hath a Fee-simple, Co. on Lit. f. 207. 2.
Fent. L. 2. c. 3. p. 67. Pleas. Com. 356.
Dyer 163.

If one make a Lease for ten years to a Man, the Remainder for twenty years to another, and he in Remainder release all his Right to the Lessee for ten years: In this Case he shall then have it for thirty years, for one Lease for years cannot grow in another; CA on Lin 7273. and 8 bar 1111 G

IF

and if two Joyntnants for life be, and one
of them makes a Lease for years of his part
to commence after his death; here though
the Lessee never had possession during the
Lessors life, yet the surviving Joyntnant
shall be bound by this Lease, for the Lessee
 hath a present Interest; Finch *Lease* 3 p. 97.
Mitch v. Dye 187. *Lit* 79. b. *hous.*

Co. on Lit. f. 185. a. and 186. a. b.
Harlin and Barrow Case, *Hill* 43 *Elix.*
C. B. Goldsb. Rep. p. 187. pl. 130. *Mears*
Rep. the same Case.

But it is otherwise of a Grant to have
by Lease, if the Grantor pay ten pounds be-
fore *Michaelmas* next, and the Joyntnant
which made the Grant die before the
day; for here is no Interest at all but a
Communication till the Money be paid,
Finch l. 100. 3. p. 97, 98. 3 *Elix.* *Plowd.*
2603. *Co. on Lit.* f. 184. a. *H. 8.* 22.
PA. Cas. 169. 1. *Wicham* did buy and of
him a Man seized of Land in Fee-simple
made a Lease of the same to another, to
have and to hold the same for Term of life,
and do not mention whose life; in this
Case it shall be taken to be the Lessors own
life, for the Act of every Man shall be taken
most strongly against himself, *Co. on Lit.*
p. 421. a. *Philps Pr. of Law*, p. 88.

But

But if Tenant in Tail let a Lease, without expiring whole life, it shall be taken to be for the life of the Lessor, and so if Tenant for life make such a Lease it shall be intended for the Lessor's life. *Co. on Lit. f. 42. a. 183. A. Finch l. 1. c. 4. p. 601.*

If a Man let Land for life without saying more, the Reversion of the Fee-simple is in the Lessor. *Finch l. 2. c. 3. p. 113.*

If Tenant for life or years of Land make a Feoffment in Fee, and give Livery, they thereby forfeit their Term. *Finch l. 2. c. 3. p. 113. See Tynntown f. 286.*

If two take a Lease for their Lives, and make partition, either of them dying, his part immediately reverts to the Lessor. *Tynntown Case, Dyer 47. Gough l. 1. p. 199.*

A Lease was made to a Widow for forty years under this condition only, that if she so long lived sole, and dwelled in the House; the Woman continued sole all her life, and dwelt all her time in the said House, and died within the Term, and it was adjudged that the Term did continue, by reason of the necessity of the word, for it is neither Condition nor Limitation. And if I make a Lease for forty years, if the Lessor dwell upon the thing let, during the Term, now if he die the Lease is determined, for that

the point of Limitation goeth to all the Term; but if it be a Lease for forty years, if the Lessee dwell upon the thing let during his life, here if he die the Lease continueth, *Hill. 43 Eliz. in C. B. Sayer and Hardins Case, Goldsb. Rep. p. 179. pl. 182.*

If a Lease be made to the Husband and Wife, yielding a greater Rent than the Land is worthy in this Case if the Husband die within the Term, the Wife may waive the occupation of the Land, and so be discharged of the Rent: But if the Husband out-live the Wife and die, his Executors, if they have Assets to pay the Rent to the end of the Term, may not refuse the Lease; but if they have not Assets, they may waive the occupation, and by special pleading discharge themselves, *Dr. and Stud.*

A. 20 p. 33. f. 120. d. 3. Cowels Int. p. 193.

10 Brouncker 205, 207. Trin. 24 Car. 1.

R. R. Regis. Pract. p. 120.

A Copyholder in Fee surrendered to the Lord of the Manor his Copyhold Estate and the Lord made a Lease for years of the Manor, and of the Copyhold, by the Name of his Tenement called B. and whether by this the Copyhold was determined or no, was the question, and it was held that it was not; because when the Lord let the Manor, it was included as parcel thereof, but

but if he had made a Lease for years of the Copy-hold by himself, that had destroyed the Copy-hold, for it was then dissolving that time severed from the Manor, and so could never again be demisable by Copy, *Mich.*

14 Car. 1. in *B. R. Lee and Richbys Case*, 11 Cr. 279.

If a Copy-holder make a Lease for years, which is a Forfeiture at the Common Law, and after the Lord makes a Feoffment, or a Lease for years of the Freehold of this Copy-hold; in this Case the Feoffee or Lessee of the Lord shall not take advantage of the Forfeiture; for the Lease of the Freehold made by the Lord before Entry, is an assent that the Lessee of the Copy-holder shall continue his Estate, and so it is in nature of an Assurance and Confirmation of the Lease, *Mish. 40. El.* in *C. B. Pao and Merrials Case*, *Quar. Rep. f. 63.*

5. Every one who hath a lawful Estate or interest in a Manor, be it in Fee-simple, Fee-Tail, Dower, Tenant by the Courtise, Tenant for life, Tenant for years, Guardians, Tenant by Statute Merchant, Seignior or Adger, Tenant at Will or Sufferance; if a Copy-hold escheat or come into their hands during the time, they may regrant it, and it shall bind the Lord, because every

one of them is *Dominus pro tempore*. But a Dissessor, or the Feoffee of a Dissessor, or any other who hath a wrongful and defeasible Estate or Interest, cannot make any such voluntary Grants to bind those who have the Right. But any such Lord in by wrong, may make Admittances upon Surrenders, or toffers upon Descents, &c. which shall be good and binding. *Co. on Liv. f. 58. 26 E. Clerk and Pennyfeathers Case, Co. 4 Rep. f. 23. and Mich. 30 El. Rouses Case, Owens Rep. f. 28, 29.*

If a Copyholder accept of a Lease for years of his Copyhold, by this his Copyhold Estate is determined, 29 *El. Lucas Case, Co. 2 Rep. f. 16.*

A Lease was made to Husband and Wife for years, if they or any issue of their Body should so long live: one of them died having no issue, and it was resolved the Lease was not determined thereby, for it is to be taken, That if the Husband or the Wife, or the issue should live, the Lease was to continue, *Abt. Moors Rep. p. 77. Pl. 359. Baldwin and Cooks Case.*

The Custom of a Manor was That a Copyholder letting his Lands for longer time than a year, that then they should be forfeited. A Copyholder makes a Lease for a year, and so from year to year, excepting the last
H day

day of every year: and all the Court were of Opinion that it was a Forfeiture; for it is but a shift to avoid a Forfeiture, and in Law this is no avoidance, for it is a certain Death for two years excepting two days; and although there be intermission of a day, yet it is not material in this Case, *Mick. 10 Jac.* In *B. R. Lister and Wigan's Case*, *Cri. 2 part 308.* and *Bull. 1 part 215.* the same Case; and see *Hill. 4 Car. 1.* In *B. R. Mervin's and Whitton's Case*, *Cri. 1 part 169.*

If the Fine of Copyholders of a Manor upon admittance be incertain, yet the Lord cannot demand or exact unreasonable Fines; and if he do, the Copyholder may by the Law deny to pay them, and it is no Forfeiture; and it shall be determined before the Judge, upon proof of the value of the Land what Fine was reasonable to be demanded; for if it should be otherwise, great part of the Copyhold should be destroyed at the Will of the Lord, by exacting unreasonable Fines, *Mick. 43* and *43 Eliz.* In *B. R. Hubbard and Hammond's Case*, *Co. 4 Rep. f. 27.* and *Patch. 26 Eliz. Berkeleys and Hoggins's Case*, cited in *Litcher Rep. f. 14. sec.*

If the Lord assess a reasonable Fine, and require the Copyholder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assess, &c.

within the time of the lease, the land was sold, a fine above two years and a half value over.

The third assised a fine of one hundred to be paid by a Copyholder, and appointed it to be paid at his chapel Messuage at the Manor, the fourth assised a fine of one hundred, and appointed the fine to be paid at the Manor (that is within two years Quit-rent) and the fifth assised the day of assising the other fine, but at the appointed place for the payment thereof, neither to excuse his non-payment, nor make any other refusal, and it was held to be a Forfeiture of his Copyhold, but if he had come at the day assigned him for the payment, and had then tendered the two years Quit-rent, being the fine certain according to the custom, though not assised nor demanded by the Lord, it had not been a Forfeiture, 2 Mer. 297. in B.R. *Gardner and Norton's Case*, Cro. 2 part 627. *Dunbar's Rep.* f. 122.

If a Woman make a Lease at will, reserving Rent, and after takes Husband, yet the Lease at will continues still: or if a Female sole, who is a Lease at will takes an Husband, yet the Lease at will is not thereby determined, but is still good, *Mick.* 36 and 37 El. in *C. B. Henshaw's Case*, Cro. 2 Rep. f. 120. 3 H. 8. *Vide* *Dallway's Rep.* f. 163. and *Terre de ley*, *Cur. Conservand.*

Also

Also if Husband and Wife make a Lease, at will of the Wives Land, reserving Rent and the Husband die, yet the Lease at will continueth: and so it is if two make a Lease at will to two others, if either one of the Lessors or Lessors die, yet the Lease continues, Co. on Lit. f. 55. b.

If Tenant at will Lease for years in his own name, it is a disseisin, and the Lessor may have Trespass against the Grantee of the Lessee at will, 27 H. 6. 3. Pasch. 22 E. 4. f. 5. Mich. 22 E. 4. f. 12. Co. on Lit. f. 57. a.

If a Man Lease to one at will, and the Lessor die, the Will is then determined, Kitchin 237. a. 21 H. 6. f. 41.

If a Lay-man who is unlearned, and cannot read, be bound to Seal a Lease Bond, or other Writing to another, in this Case he need not do it, without there be some there to read them to him, if he requests it, and in such language as he understandes, and if it be read amiss to him, or declared contrary to what it is, so as the illiterate Man is thereby deceived, as a Bond of twenty pounds is read as of twenty shillings, or a Feoffment of two Acres is read as of one, in such case he may very well plead, That it is not his Deed: but if he request not to have the Writing read, though it be contrary to his intent and meaning, yet it shall bind him, if he seal

and delivers it, for it was fully that he did not desire to have it read, 20 *Eliz. Man-
serv. Case*, Co. 2 Rep. f. 3. and 20 *Eliz.
Thoroughbred Case*, Co. 2 Rep. f. 9. 14 *Eliz.
20. 9 H. 4. 15.* and see *Hem. Piggas Case*,
Co. 11 Rep. f. 27.

If I let Lands in which are Mines or Trees,
I cannot enter or take the Trees, or Profits
of the Mines, but am thereby a Trespasser,
unless I reserve such a privilege to my self
when I let the Lands, 9 *E. 4. f. 57.* But I
may enter into the Lands to see if any waste
be done, and am not a Trespasser by such
entry; and if the Tenant deny me entrance
upon such account, I may have an Action of
the Case against him for opposing me, for
the Law gives me liberty to enter to see if
there be waste, and if I be disturbed of my
entry and view, the Law will not leave me
without remedy, and so it was adjudged,
Pafsh 16 Jac. in *B. R. Jure Flus and
Dewman*, Co. 2 Rep. 578. *Faint 88. f.
47. f. 57.*

All Feoffments, Grants and Leases
made by dures of Imprisonment are void-
able, and that not only by the Parties them-
selves, but by their Heirs, and those who
have their Estates, *Perkins fell. 16. Ca. on
L. 7. 253. b. 14 Aff. p. 33. Pl. 18. a.*

If a Lessee for years do lose his Indenture of demise of the Lands let unto him, yet he shall not lose his Term in the Lands let by Indenture which is lost, if he can prove any way that there was such a Term let to him by Indenture, and that it is not determined or ended: and so it is of any other Estate in Land, if the Deed that created the Estate be lost, if it can be sufficiently proved that there was such a Deed made, and that such an Estate was conveyed by Deed. *Pesch. 1650. in B. R. Pract. Regist. p. 198.*

If Tenant for Term of years, or any other Tenant be ousted, or if they die, their Executors, or they, if living, shall have reasonable time and free liberty to come and fetch away their Utensils or other Goods out of the Lessors House, *Lit. Ten. p. 15. s.*

Note that no Man ought to take above two Farm Houses, whereunto Lands are belonging, either for years, life, or at will, by Indenture, Copy of Court Roll, or otherwise, on pain to forfeit three shillings four pence for every Week he takes the Profits of them: and these two Parts must be situate in the same Parish where the Tenant dwells, *25 H. 8. cap. 13. Pauls. Stat. f. 307.*

CHAP. V.

Of Corn sown where the Tenant is ousted,
or the Term determines before it be ripe,
who shall have it, and also of Eschevers
and Trees blown down, &c.

IF Tenant at will sow the Land, he shall
have free liberty to come and cut, and
carry away his Corn, although the Lessor
put him out before it be ripe, Co. on Lit.
f. 55. a. 11 H. 4. f. 90. *Flora lib. 3. c. 13.*

But if Tenant for years sow the Land, and
his Term end before the Corn be ripe, then
the Lessor shall have it, unless it be covenant-
ed between them, That the Tenant shall
have his way-going Crop, as they call it in
Yorkshire. And the reason of this is because
the Tenant did know when his Term would
end, and it was his folly that would sow
Corn on the Land, which he knew would not
be ripe till after the Term were expired, Co.
on Lit. f. 55. a. b. *Clerk of Assise, p. 60. Lit.*
Ch. Tenant at Will. Trin. 13 Jac. Reg. 3131.
in *C. B. Grantham and Hawley's Case,*
Hobart's Rep. f. 132. Sheppard's Touchstone
p. 431.

If Lessor at will set Roots or sow Hemp,
or Flax, or any annual Profit, if after they
be

be planted the Lessor do out him, or if the Lessee die, the Executors of the Lessee, or he if living, notwithstanding shall have that years Crop. But if he plant young Fruit-trees, or young Oaks, Alders or Elms, or sow Acorns, and then is ousted by the Lessor, in this Case he shall have none of these, because they yield not present annual Profit, *Ca. on Lat. f. 55. b. 10 Aff. pl. 6. Temp. E. 1. Br. 25.*

Every Tenant that hath an Estate uncertain shall have the Corn sown by him, though he be ousted before it be ripe, *Ca. on Lat. f. 55. b. 7 Aff. 19.*

If Tenant for life sow the Ground, and die before the Corn be ripe, his Executors shall have it, and Grass if it be cut, but not Meadow unmown, for that is part of the Inheritance till it be severed, *10 E. 3. 29. Clerk of Assise, p. 80. Ca. on Lat. f. 55. b.*

So if Tenant for life Lease for years, and the Lessee sows the Ground, and before it be ripe Tenant for life dies, yet notwithstanding the Lessee for years shall have the Corn, or his Executors if he be dead, *Ca. on Lat. f. 55. b.*

Tenant for life, the Remainder in Fee, Tenant for life leaseh for years, the Lessee is ousted by a Stranger, and the Stranger sows the Land, and then Tenant for life dies: In

this Case it was resolved that the Corn of right belonged to the Lessee of Tenure for life, and not to the Stranger, nor him in Reversion, 38 Eliz. in B. R. Sir Henry Knyvet's Case, Co. 5 Rep. f. 85. *Goldborough's Rep. p. 143. p. 60. the same Case.*

If A. Lease Land for the life of B. and sow the Land, and before the Corn be ripe B. dies, yet notwithstanding A. shall have the Corn; for his Estate was determined by the act of God; and the reason why a Man which hath an uncertain Estate shall have the Corn, is, for that he hath manured the Land, and therefore it is reason that he that laboureth should reap the Fruits of his labour.

If a Man make a Lease for life of Ground sowed, and before severance the Lessee dies, in this Case the Lessor shall have the Corn, and not the Executors of the Lessee for life, for the Corn came not of the manurance of their Testator. And so if Lessee for life sow the Land, and then assign over his Interest, and dies before the Corn be severed, here he in Reversion shall have the Corn and not the Assignee of the Lessee for life, *causa qua supra per Popham and Tanfield, Goldbor. Rep. p. 144. 145.*

If a Man by his Will devise Lands sowed to one for life, and after his decease the Re-
mainder

Ch. 5. Land-Lord and Tenant. 171

remainder to another for life, and the first Tenant enters and dies before severance, and he in Remainder enters; now he shall have the Corn, and not the Executors of the first Tenant for life. *Per Gualtero and Tanfield, Goldsbor. Rep. p. 144.*

If a Man be seised of Land in right of his Wife, and sow the Land and dye, his Executors shall have the Corn, but if they be Joynt-tenants of Land, and the Husband soweth the Ground and dieth, the Wife shall then have it, *Co. on Lit. 55. b. 7 Aff. pl. 10. 8 Aff. 21. Pacis consultum, p. 33. Perkins fell. 318. Swinburns Wills, 3 part fell. 6. p. 133. Dyer 316.*

And if a Woman who is Tenant for life or in Dower, take an Husband, and he sow the Land, and before it be ripe she dies, yet the Husband shall have the Corn, *Swinburn ibid. Cowell Int. p. 141.*

And so if the Husband let the Lands of his Wife for years, and the Lessee sows the Lands, and before severance the Wife dies, yet the Lessee shall have the Corn, or his Executors if he be dead. The like Law of Lessee for years, of Tenant by the Courtisie, when Tenant by the Courtisie dies before his Lessees Corn is ripe and severed, *Stat. par. f. 37. b. Perkins fell. 313, 314. Cowell Int. p. 141.*

If a Woman who holds Lands *Durante viduitate sua* sows the Ground, and then takes Husband before the Corn be severed, in this Case the Lessor shall have the Corn: And so if Tenant at will sow the Land, and then will occupy the Land no longer, he shall then lose the Corn: and the reason hereof is, because that the determination of their Estates grew by their own act, Co. on Lit. f. 55. b. 44. *Eliz.* in *B. R. Olands Case*, Co. 5 Rep. f. 216. and *Goldboroughs Rep.* p. 189. pl. 136. the same Case, Co. 2 part last. f.

But if such a Woman who holds Land *Durante viduitate sua* Lease the same Lands to another, and the Lessee sows the Lands, and then the Woman takes Husband, which determines her Estate, yet notwithstanding the Lessee shall have the Corn: So if Tenant for life Lease for years, and the Lessee sows the Lands, then Tenant for life commits a Forfeiture, so that his Lessor enters, yet the Lessee of Tenant for life shall have the Corn: but if Tenant for life sow the Land, and then commits a Forfeiture, and the Lessor enters, here he shall have the Corn, and not Tenant for life, because the determination of his Estate grew by his own act, *Goldboroughs Rep.* p. 189.

Ch. 5. *Land-Lord and Tenant.* 173.

A Lease made by the Husband of the Wives Land in his own name only is void after his death, but if the Lessor have sown the Land he shall have the Corn, *Novs. Max. p. 70.*

If the Lessee sow the Land, and then surrender his Term, the Lessor or he to whom the Surrender is made, shall have the Corn; so if a Man enter for condition broken, he shall have the Corn, and not he that sowed the Corn, for his entry overreacheth the Estate of the other, *Goldsb. Rep. p. 189.*

If Lessee for years sow the Land, and then commits Waste, and the Lessor recovers the Land in an action of waste, here the Lessor shall have the Corn sowed; *Trin. 37 H. 6. 35. Perkins Sect. 515. Cowels Inst. p. 142.*

If there be a Landlord and Tenant, and the Land is recovered by a title paramount against the Landlord; in this Case if the Tenant have sowed the Land, he that recovered shall have the Corn, if it be not severed before Judgment; but if a Common Recovery be had against the Landlord in a Writ *Entry on Le poss.* or in any other Writ, by a false and feigned Title, in such case the Lessee shall have the Corn, *Mish. 7 H. 7. 11. Co. on Lit. f. 142. Perkins Sect. 515.*

If

If a Manor be taken in Execution upon a Statute Merchant, and he who hath the same in Execution doth sow the Land, and then a Ward falls to him by reason of the Manor, which Ward is as much worth as the Debt doth amount unto, so that he who oweth the Manor may have a *Scire facias* against the Creditor and have his Manor again; yet the Creditor shall have the Corn which he had sowed, *Cowels Int. p. 141. Perkins, 517.*

If an Abbot after the death of the Ancestor enter and sow the Land, and after the right Heir doth enter; in this Case the Heir shall have the Corn. So if a disseisor sow the Land, and then the disseisee cometh upon him, or recovereth in an Assise before the Corn be severed, in this case the disseisee shall have the Corn; but if it were severed before the Entry or Recovery, though it remain still upon the Land in Sheaves or Cocks, there the disseisor shall have it; but it is otherwise in the case of Trees severed from the Land, for if they be not carried off the Land before the disseisors entry, he shall then have them, *37 H. 6. 35. 3 H. 7. 17. 28 H. 6. 1. Goldsborough's Rep. p. 144. Perkins fol. 519.*

If a Widow have Land assigned to her by the Sheriff for her Dower, and this Land is sowed with Corn, here she shall have the Corn,

Com. *Vide Perkins* 521. 15 Elix. Dyer 316.

Note, That the Statute of *Merton*, chap. 1. which giveth, *Quod cumque videtur de cetero possit ligare blada*, &c. is unto this point, is but in affirmance of the Common Law; for if Tenant in Dower soweth the Land which she holdeth in Dower and dieth before severance, her Executors shall have the Corn, if she do not devise it to another; and so was the Law taken in the year of H. 3. *Devise* 6. which was sixteen years before the making of the Statute of *Merton*, *Perkins* *lib.* 522. Co. 2 *Inst.* 83.

If Tenant in Tail sow the Land and give me the Corn, and die before I have sowed it upon the Land, yet I may afterwards level the same and take it, for that the Executors of the Tenant in Tail should have had it, *Perkins* *lib.* 59.

But if Tenant in Tail give or sell to me a Tree growing upon the Land and dies before I have cut the Tree, and his Issue entereth into the Land where the Tree is growing, now I cannot cut the Tree but he may have Trespass against me, but it seems if it were cut in his life-time, I may then take it away after his death; but *Quere* of this, for some are now of a contrary opinion, *Kirby* *cap.* 226. a. b. 27 H. 8. f. 6. *Pasch.* 18 E. 4. f. 6.

f. 6. 2. and *Hill. 18 E. 4. f. 21. b.* in the end, *Perkins fell. 58.*

If Tenant in Fee-simple give or sell me a Tree growing upon his Land, and die before I have cut it, yet I may have it after his death if I please, *Perkins fell. 58.*

Note, That to every Tenant for life or years, the Law is incident to his Estate, giveth him without provision of the party, three kind of Estovers; that is *Houfbote*, which is twofold, viz. *Estoverium adificandi & arandi*, that is for repairing the Houses and for burning; then *Ploughbote*, that is to say *Estoverium arandi*, that is for mending his Ploughs, Harrows, Wains, and making Rakes, Forks, &c. for getting his Hay together; and lastly *Haybote*, and that is *Estoverium claudendi*, and that is for repairing and amending his Stack bars, Gates, Styles and Hedges; but these Estovers must be reasonable. *But* in the *Saxon* Tongue, and *Estovers* in the *French* Tongue in this case are all of one signification, that is to have compensation or satisfaction for these purposes, *Bract. lib. 4. f. 222, 231, 232. Fleta lib. 4. cap. 19. 25, 26, 27. F. N. B. 180. 21 H. 6. 46. Co. 2. part Inst. f. 18. 1 E. 4. f. 9. Term de la Ley verbum Haybote, verbum Fircbote and Houfbote, and Philips pr. of Law, p. 65.*

These

Ch. 5. Land-Lord and Tenant. 177

These Estovers the Lessee may take without the Assignment of the Lessor, unless the Lessee be restrained by special Covenant, for *Modus & conventio vincunt Legem. Co. on La. 41. b.*

Estovers granted to be burnt in such an House, shall go to him that hath the House, by whatsoever Title, for one is inseparably incident to the other, *Finch lib. 1. cap. 3. p. 15. 12 El. 381. 5 H. 7. 1. Perkins sect. 104. Kitchin 51. a.*

If Tenant for life or years cut down Trees or pull down Houses, or suffer them to fall, or that they be blown down or eradicated by violent Tempest, the Lessor in such cases shall have the Trees and Timber of the same Houses, for the Lessee had them only as things annexed to the Land, and after they are severed, his interest is then determined, *4 Co. f. 62. and 11 Co. f. 81.*

If Timber Trees be blown down by the Wind, the Lessor shall have them, for they are parcel of the Inheritance and not the Tenant's for life or years, unless it be to repair Houses where they are in decay; but if they be Dotards without any Timber in them, which bear neither leaves nor fruit in Summer, then the Tenant shall have such, *4 Co. f. 83. 16 Eliz. Dyer 332. F. N. B. 59. Mich. 20 E. 3. Waste 33. Abridgement.*

Moor's

128 *The Law concerning Chis.*
Moys Rep. p. 227. pl. 1037. Countess of
Cumberland's Case.

Lessee for life, or years, Tenant in Dower, or by the Courtship, or Tenant in Tail after possibility, &c. have only a special interest or property in the Trees, as things annexed to the Lands, so long as they are annexed thereunto; but if they or any other sever the Trees from the Land, then their interest is determined, and the Lessor may take the Trees as things that are parcel of his Inheritance, the interest of the Lessee being determined, 4 *Ca. f. 62. Neys Moys. p. 65.*

If a Stranger cut down a Tree growing upon the Land of Lessee for years, and carry it, or the Bark thereof away; the Lessor at his Election may either have an Action of Trower against the Stranger, or an Action of Waste against the Lessee; for the property of the Timber is always in the Lessor notwithstanding the Statute of Gloucester, which gives him his Action of Waste; and so was the Opinion of *Jones Whitlock* and *Richardson*, *Hill. 7 Car. 1. in B. R. Berry and Edwards Case: 1 Cro.*

If one have Estovers in certain in ten Acres of Wood, and five of them descend to him, he shall have the whole out of the residue, *Critica juris ingeniosa, p. 123.*

II

If a Man grant to another Estovers in certain in such a Wood, and afterwards the Grantor makes such waste in the Wood as that there is not sufficient store left, out of which the Grantee may take his Estovers: in this Case he may have a *Quo Minus* against the Grantor, which is in nature of a *Prohibition* forbidding him to make such waste.

There is also another Writ of *Quo Minus*, which every Farmer of the King may have out of the Exchequer, against one that is indebted to him, in which Writ he doth surmise, that unless the said Party pay him his said Debt, he is thereby less able to pay the King his Farm, *Terre de la Doy*.

And where a man is indebted to the King, and the King is indebted to the man, the King may have a Writ of Quo Minus against the man, and the man may have a Writ of Quo Minus against the King.

And where a man is indebted to the King, and the King is indebted to the man, the King may have a Writ of Quo Minus against the man, and the man may have a Writ of Quo Minus against the King.

CHAP. VI.

Of Distress: of what things a Distress may be taken, and how it may be used, &c.

THE Word Distress is a French Word, and in Latine it is called *Distressio sine Averagio*, because the Chattel distressed is put into a freight, which we call a *Distress*. Co. on Lis. f. 26. a.

A Distress must be of such a thing whereof a valuable property is in some body, and therefore Dogs, Ducks, Doves, Carriages, and the like that are *ferre Nature*, cannot be distressed, nor so likewise when a Man or Woman is riding on him, nor an Axe in a Mans hand cutting of Wood, for they are for that time privileged. Co. on Lis. f. 47. a. 14 H. R. 35. 2 E. 2. *Tin. Distress*. 6 R. 2. *Refsum* 11. *Dollar and Stud*. 11. c. 3.

Neither can things which are for the Maintenance of Trades, be distressed for Rent: as another Mans Horse in a Smiths Shop, nor a Travellers Horse in an Inn for the Rent thereof: nor the Materials in a Weavers Shop for making of Cloth, nor Cloth or Garments in a Taylors Shop, nor

Sacks

Each of them & what is a *Bill* for the
 Right thereof, nor any thing that the Lessee
 hath disfranchised the Savage Feudal, for it
 is then in the custody of the Law, *Car. 1.*
Litt. f. 47. 7 H. 7. c. 1. 2. 22 E. 4. 49. 2.
Ways & Means p. 45. 143. Car. 1. c. 184.
Term de Le. Dy. 20. 20. 20. 20. 20. 20.
 A District may not be taken of Out of
 the Plough, nor a Bill drawn, through it be
 raised up to be picked, so long as it lies up-
 on the other side, neither may a Man
 have his Bill drawn to a Court, & disfranchise
 them, if there be a right to the Bill, but
 that what now there shall be a Bill drawn to
 disfranchise the same time with the Court of
 the Plough are disfranchised, otherwise the
 District is not unlawful, for it matters not
 what was done or when, *2 H. 7. c. 1. 2.*
2 H. 7. c. 1. 2. 22 E. 4. 49. 2. 20. 20. 20. 20.
Stat. de Bill. de Le. 20. 20. 20. 20. 20. 20.
f. 117. 20. 20. 20. 20. 20. 20. 20. 20. 20.
2 H. 7. c. 1. 2. 22 E. 4. 49. 2. 20. 20. 20. 20.
Dy. 312. Fines p. 135. Ca. 2. 2. 2. 2. 2. 2.
 If the Owner or his Servant be taken a
 Court, who doth privilege both Court and
 House that they may not be disfranchised, but
 more than an Horse or a Bull, & a Man riding,
1. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2.
 Case.

But now by the late Statute 17. & 18. *Ch. 1.* *Shewers or Cocks of Corn,* Corn bote or in the *Schaw,* or Hay lying or being in any Barn or Granary, or upon any Movel, Stack or Rick, or otherwise upon any part of the Land or Ground, may be seized and secured, locked up or detained for Rent arrear, for or in the Nature of a Distress, so as the said Corn, Grain or Hay so distrained be not removed by the person or persons distraining, to the Damage of the Owner thereof out of the place where the same shall be found and seized, but be kept there as impounded till the same be replevied, or sold in default of replevying according to the directions of the Act.

And by the same Statute it is Enacted, That where any Goods or Chattels shall be distrained for any Rent reserved and due upon any Demise, Lease or Contract whatsoever, and the Tenant or Owner of the Goods so distrained shall not within five days next after the Distress taken, and no more thereof, with the value of such distress, let at the chief Mansion House, or other most notorious place on the Precincts, charged with the Rent distrained for, Replevy the same with sufficient Security to be given to the Sheriff according to Law,
That

That three after Expiration of the said five days, the Person distraining shall and may with the Sheriff or Under-Sheriff of the County, or with the Constable of the Hundred, Parish or place where such Distress shall be taken (who are to be aiding and assisting therein) cause the Goods and Chattels so distrained to be appraised by two sworn Appraisors, whom such Sheriff, Constable, &c. are impowred to swear to appraise the same truly according to the best of their Understanding; and after such Appraisalment may lawfully sell the Goods and Chattels so distrained, for the best price can be gotten for the same, towards satisfaction of the Rent distrained for, and of the Charges of such Distress, Appraisalment and Sale, leaving the Overplus, if any, in the Hands of the Sheriff, Under-Sheriff or Constable for the Owners use.

No Man may be distrained by the Utensils or Instruments of his Trade, as the Axe of a Carpenter, or the Books of a Scholar; neither can Furnaces, Cauldrons, or the like, fixed to the Free-hold, nor Fan fixed to a Oven Pan, although the Lessee may remove them during the Term, nor the Windows or Doors of the House whilst they are on Hinges cannot be distrained; but if they be removed from off the Hinges,

then they may be distrained, *Co. Lit. f. 47. b. Finch l. 2. c. 6. p. 135. 20 H. 7. f. 13. 21 H. 7. 26. 49 Aff. 9. Complaint Attorn. p. 124.*

The Lord may not distress Tables dormant in the House of his Tenant, nor any thing which cannot be attached in an Assize, *21 H. 7. 26. Kitchin 63. a.*

If one distrain Goods perishable, it is at the peril of the Distrainer, that they perish not, *9 E. 4. 2. Hewes and Norberus Case, 1 Bulstr. 53.*

The Land-Lord may distrain the Beasts of a Stranger that come in by Escape into his Tenants Ground, for the Rent thereof, if they have been there by any space of time, though they have not been levant and couchant on the Ground. But if the Stranger see his Beasts escape, and presently follow them, and before he can drive them out again, the Land-Lord distrains them for his Rent, in this Case the Distraint is lawful, for here the Beasts are always in the Owners possession, and in his view, *Reynold and Oakleys Case, 1 Broun. 179. Hob. Rep. f. 265. the same Case, 19 Elec. Dyer 218. Co. on Lit. f. 47. b. 7 H. 7. l. 2. 20 H. 7. 21.*

The Lord cannot distrain another Mans Horse in the House of one amercor, nor the

the Robb of another in a Taylors House, while the Taylor is entered, 30 H. 7. 21. *Kilbuck* 62. 4.

For although a Distress by reason of the Land may be taken of the Goods of any person that are upon the Land lyable to such Distress. Yet a Distress for a Matter which respects the person only, although the person be subject to it in respect of some Land, shall be only upon the Goods of the person so be charged.

The Lord may sell a Distress taken for an Amercement in a Court Leet, as the King may sell the Distress, because it is a Court of the Kings; But upon a Distress in a Court Baron, though it were the Kings Court, yet the Carrel must not be sold, 3 H. 7. 24. *Kilbuck* 61. 8. *M. 3 Jac.* in *D. R. Gonsalves and Wife, Case*, 2 Cr. 255.

If a Man distress Goods or Chattels, he may put them where he will, either in Pound Civil, or in an House or close place, but if they are or take any harm he must redress for them, *Fleet* 4. 2. 2. 6. p. 137. *Kilbuck* 67. 4. 3. 2. 4. 1. 2. 4.

But if they be living Carrel, he that distresses must put them in a common Pound, or else in some open place where the Owner may come without Trespass to feed them; and if they be not in a Common Pound,

Pound, then notice must be given to the Owner where they are, and if after they die for want of Meat it is in the Owners default; But if they be in a Pound Cover, that is, a close House, or out of the County, and die for want of Meat, then he that distrained shall be at the loss, *Co. on Litt. f. 47. b. Dalt. and Strad. J. s. c. 27. Fleta Lt. c. 20. F. N. B. 89. Termi de la Ley, lit. Distr. Camp. tit. 125.*

Cattel taken Damage Feasant may be impounded in the same Ground where they are taken Damage Feasant; but Goods or Cattel taken for other things may not, *20 H. 7. f. 39. R. v. 107. a.*

No Man may drive a Distress out of the County where it is taken, nor out of the Rape, Hundred, Wapentack or Leith where such Distress is taken, unless it be to a Pound Overt within three Miles of the same Hundred; but it is said, that one may drive the Distress as far as he will within the same Hundred where it is taken, so that if the Hundred extend twenty Miles he may drive the Distress so far, but not above three Miles out of the same Hundred; or if an Hundred lie in two Counties, if the Distress be taken in that part of the Hundred which lies in one of the Counties, the party may drive the Distress into the other

1 a County

County as far as the Hundred extends, but not above three Miles farther. Neither may a Distress be divided and impounded in several places, nor above four pence taken for the Fees of impounding one whole Distress, on pain of 5 *l.* and treble damages to the party grieved, *M. 30 and 31 El. in C. B. Berdsey and Pilkingtons Case, Goldsb. Rep. p. 100. pl. 5. and p. 145. pl. 62. Partridge and Naylor's Case, M. 24 El. Godbols Rep. 11. Co. on Lit. f. 47. b. Marlbridge C. 4. West 1. c. 16. 2 and 3 Pb. and M. c. 12. Rastal Tit. Distresses 11. Co. 2 Inst. f. 106. Fleta l. 2. c. 40.*

If a Man distrain Beasts Damage Feasant, and put them in a Pound Overt within the same County, according to the Statute, and the Owner suffers the Beasts to die for lack of Meat; then he that distrained them is at his liberty to take his Action of Trespass, *DeB. and Stud. l. 2. c. 27.*

If the Owner of the Cattel tender sufficient amends before the Distress taken, it makes the Distress unlawful, and if he tender after the Distress taken, and before impounding, it makes then the Detainer unlawful; but tender after impounding comes too late, for then the cause is put to the trial of the Law; if the Party that distrained refuse the tender, yet the Owner may not take

take his Cattel out of the Pound; for if he do, a *Proco frastis* lieth against him. Note also that tender of amends to the Bailiff, or Servant will not serve, for he cannot deliver the Distress once taken, no more than change the Avowry of his Master, or demand Rent upon a Condition of Re-entry, *Doff. and Stud. l. 2. c. 27. Kitchin 207. b. Co. 2 Inst. f. 107. 7 E. 3. 8. b. 20 Aff. 38. 43 El. in B. R. Pilkingtons Case, 3 Co. f. 76. and 8 Co. f. 49. Hill. 9 Jac. in C. B. Rep. 1835. Roberts and Tungs Case, 1 Brownlow 173.*

But note after such tender the Party that owes the Beasts may sue out a Replevin to have his Goods again; and if it appear when they come to tryal to the Jury that the tender was sufficient, then the Owner shall recover Damages in the Replevin against him that distrained, for detaining the Goods; and if on the contrary it appear that the tender was not sufficient, then the Avowant, that is, he that distrained, shall have such amends as the Jury shall assess, *Doff. and Stud. l. 2. c. 27.*

If after such tender of amends for Damage Feasant, the Cattel die in Pound Overt, yet the Owner shall be at the loss, by reason of the wrong done at the beginning, and therefore the Owner must look to give

them Meat so long as they be in Pound;
Doff. and Sind. 1a. c. 27. Kitchen 207. b.

But if the Owner of the Cattel procure
a Replevin to deliver them: and he that
distrained resists it, and will not deliver
them: in this case if they die after for
want of Meat, it is at the peril of him that
distrained, and the Owner shall recover
Damages against him in an Action upon
the Statute, for disobeying of the Kings
Writ, Doff. and Sind. 4 2. c. 27.

If I send my Servant to take a Distress
for a Rent or Service, and he puts it in the
Pound, if the Owner of the Cattel or a
Stranger take them out, I shall have a *Pareo*
fructu: for it is my Pound and not my Ser-
vant's, Kitchen f. 208. b. Case 211. p. 193.

If I imposed Cattel taken upon a Di-
stress in a Friends Close, with his licence,
and the Owner of the Cattel takes them
out: in this Case I shall have a *Pareo fructu*,
and my Friend an Action of Trespass for
breaking of his Close, Frob. 1a. c. 16. p. 310.
F.N.B. 100. Kitchen 208. b.

And now upon any Releases or Pound
breach of Goods or Chattels distrained for
Rent, the person grieved shall in a special
Action of the Case recover treble Damages
and Costs of Suit against the Offenders or
against the Owner of the Goods distrained

Ch. 6. Land-Lord and Tenant. 191

in case the same be afterwards found to have come to his use or possession, *Stat. 2 W. & M.*

Quicquid in excessu altius est, lege prohibetur. And so the Statute of *Mansbridge cap. 4.* forbids the Lord to take excessive Distresses upon his Tenant for Rent or Services, on pain of being grievously amerced. As for Example, if the Lord distrain two or three Oxen for twelve pence, or the like small Sum, and the Owner bring a Replevy of the Oxen, and then the Lord avow the taking of them for the twelve pence, here of his own shewing he shall make Fine, &c. or the Party grieved may have his Action upon the Statute, *F. N. B. 89. 8 H. 4. 16. 11 H. 4. 2. Regist. 97. Ca. 2 Inst. f. 107.*

If the Lord distrain an Ox or an Horse for a penny, if there were no other Distress upon the Land holden, then this Distress is not excessive, but if there were a Swine or Calf, &c. then the taking of the Ox or Horse is excessive, because he might have taken a Beast of less value, *Ca. 2 Inst. 107.*

12. 67. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

C H A P. VII

Who may take Distresses, and for what cause, and when, and where.

A Man may distrain of Common right for Rent Service, Homage, Fealty, Ekeage, Suit of Court, &c. or for a Rent reserved upon a Gift in Tail, Lease for life, years or at Will, though there be no clause of Distress in the Lettle, Co. on Lit. f. 204. b. 205. a. 30 Aff. pl. 8. 17 E. 3. 7. 4 Co. f. 73. Doff. and Stud. l. 2. c. 9.

But for Debt, Accompt, Trespass, Reparations, &c. a Man may not distrain, Doff. and Stud. l. 2. c. 9.

It is a Maxim in Law, That a Distress cannot be taken for any Services that are not put into certainty, nor can be reduced to any certainty; for *Id certum est quod verum reddi potest*, and *Opus est quod certum sit deducatur in Judicium*, and upon the Avowry Damages cannot be recovered for that which neither hath certainty, nor can be reduced to certainty, Co. on Litt. f. 96. a. Braddon f. 230, and 238. Braddon f. 100. 20 E. 3. Avowry 131. 25 H. 6. 37.

And

Ch. 7. *Land-Lord and Tenant.* 193

And yet in some Cases there may be a certainty in an uncertainty, as a Man may hold of his Lord to shear all his Sheep depasturing within the Lords Manor; and this certain enough, although the Lord hath sometimes a greater number and sometimes a less number there, for this uncertainty being reduced to the Manor which is certain, the Lord may therefore distrain for this uncertainty: *Et sic de similibus*, Co. on Lit. f. 96. a. 7 E. 3. 38.

A Distress is inseparably incident to every Service that may be reduced to certainty as aforesaid, Co. on Lit. f. 150. b. 151. b.

A Man may not distrain for Rent after the Lease is ended, nor out of his Fee, except in some special Cases, nor in the night, unless it be for Damage Feasant, 10 E. 3. *Assessory* 137. 11 H. 7. 5. Co. on Lit. f. 47. b. 142. a.

The Executors or Administrators of him which had Fee Farm in Fee, in Fee Tail, or for Life, may either have an Action of Debt against the Tenant that should pay it, or distrain for it; and so may the Husband after the death of his Wife, his Executors or Administrators, and he which hath Rent for anothers life for the Arrears after his death, 32 H. 8. c. 37. *Writ*

gals Abridge Stat. p. 407, 408. Ruffal Tit. Nuis. Noy's Maxims p. 32. Co. on Lit. f. 62. e. and vide 29 Edw. Quad. Calcey 4 Co. f. 48.

If I license a Man to put his Cattel into my Pasture for a Week, and then I give him notice that they shall stay no longer, and he will not fetch them away, but suffers them to remain still: In this Case I may distrain them Damage Feasant; *Noy's Maxims p. 43.*

If a Man take Cattel Damage Feasant, and as he is driving them to the Pound, they run into the Owners House, who refuses to let them out again, here he that distrains may have a Writ of Habeas against the Owner for so doing. *Co. on Lit. f. 167. a. 2 R. 2. Refcous 12. Compl. Act. p. 196.*

If a Man take a Distress of Goods, and throws no cause for what, If they be put in a House, the Owner may break the House and take them out. *Vide Claytons Rep. p. 62. p. 114.*

If a Distress be taken of Goods, without cause, the Owner may refuse, but if they be impounded, he may not break the Pound and take them out, because they are then in the Custody of the Law; *Co. on Lit. f. 47. b. 6 R. 2. f. 32. 40 R. 2. f. 39. 4 R. 4. Tit. Nuis. 74. 2 R. 2. 100. e.*

If a Man distrain Cattel for Damage Feasant, and put them in the Pound, and the Owner that had Common there maketh fresh Spite, and finds the door unlocked, he then may take them out; but if it be locked, he cannot justify then to take them out, *Co. on L. f. 47. b. 3 E. 3. Trin. Trans. 11. 34 H. 6. 18.*

If Beasts driven by the High Way escape into anothers Corn, he that driveth them is no Trespasser by his Entry to fetch them out again, *Doff. and Stud. 1. 1. c. 16. Fatches Rep. f. 13. Councils Int. p. 231.*

If a Man make a Feoffment reserving a Rent, he cannot distrain without a Clause of Distress in the Deed; and if the Feoffment be not By Indenture, the Reservation is void in Law; like Law where a particular Estate is made reserving Rent, the Remainder over in Fee, *Doff. and Stud. 1. 2. c. 9. p. 74.*

If Tenant for life grant his whole Estate reserving a Rent, the Reservation is void; if it be not by Deed indented, and without a Clause of Distress, it is a Rent-Seck, and he cannot distrain, *Doff. and Stud. 1. 2. c. 9. p. 74.*

For an Amercement in a Court-Leet the Lord may distrain in any place within the Precinct of the Leet; but not for an Amercement in a Court-Baron, *Doff. and Stud.*

Stud. l. 2. c. 9. 10 H. 7. f. 15. 34 E. 3. 39 E. 3. Aduary 221. 47 E. 3. f. 121. Kuchin pag. 62. h.

If a Lease be made for a year to commence at *Michaelmas*, rendering Rent at the *Annunciation* and *Michaelmas*, the Lessor may distrain at the *Annunciation*, but not at *Michaelmas*, because the Term is ended, *Co. on Lib. f. 47. b. Doff. and Stud. l. 2. c. 9.*

If Tenant for another's life make a Lease for years reserving Rent, and *Cessary que videtur*, in this Case it is said in *Doff. and Stud. l. 2. c. 9.* that Tenant *per se* cannot distrain for the Arrears, because his Reversion is determined; but now he is helped by the Statute of 22 H. 8. for he may either distrain on the Tenant, or have an Action of Debt against him, for the Arrears due before the death of *Cessary que videtur*, 22 H. 8. c. 37. *Wargess Abr. Stat. p. 408. Co. on Lib. 182.*

If a Town be assessed, and the Neighbour by assent assess a certain Sum upon every Inhabitant, and it is agreed that if it be not paid by such a day, certain persons appointed for that purpose shall distrain, such Distress is lawful, *Doff. and Stud. l. 2. c. 9.*

Stat. l. 2. c. 9. 10 H. 7. f. 15. 34 E. 3. 39 E. 3. Aduary 221. 47 E. 3. f. 121. Kuchin pag. 62. h.

Stat. l. 2. c. 9. 10 H. 7. f. 15. 34 E. 3. 39 E. 3. Aduary 221. 47 E. 3. f. 121. Kuchin pag. 62. h.

For

Ch. 7. *Land-Lord and Tenant.* 197

For Rent granted upon Equality of Partition, or of Dowry, the Party may distrain, 21 H. 6. 7. *Doct.* and *Stail. &c.* in 101 V. 11

For Herriot Service the Lord may distrain, but for Herriot Custom he shall seize and not distrain, 8 H. 7. 10. B. 7. 38 B. 3. f. 7. B. 2. *Kitchin* 192. 4.

If a Man break the Pound, and take out his Goods, he that distrained may have a *Writ de fructu* against the Party, and may also take the Goods again whithsoever he finds them, and put them in the Pound again, 34 H. 6. 18. *Ca. on Lit. f. 47. b.* *Compl. Annot. p. 192.*

A Man distrained for ten pounds due at Michaelmas, for Rent, Goods which were not of the value of forty shillings; and afterwards distrained for the residue; and it was adjudged that he could not avow; for the Distress is not good, and it was his folly that would not take a sufficient Distress at the first; But if a Man be behind of his Rent at several days, and the Lessor takes a Distress for one day at one time, and for another day at another time, this is good, *Moor's Rep. pl. 26.* But see now *Ston. 17 Car. 2.*

If he that distrained recover in a *Replevin*, &c. if it be found upon the Writ of Enquiry that the Distress is not due, he

but if the Agent of the Rent distrained for, he that is distrained, his Executors, &c. may from time to time distrain again for the residue of the said Arrears, *Stat. 17 Car. 2. c. 7.*

If the Lord distrain the Cattel of his Tenant although nothing be behind, the Tenant for the respect and duty which he owes to the Lord, and which belongeth to him, shall not have an Action of Trespass against him *et c.* But if the Lord command his Bailiff in such Case to distrain where nothing is behind, the Tenant shall have an Action of Trespass *et c.* against the Bailiff, *Plowd. 27. Abr. 2. part 2. 311. a. 7. 4 Ca. f. 11.*

If there be Lord and Tenant by Rent or other Service, if the Rent be behind, the Lord may enter into the Tenants House, if the Door be open, and distrain for the Rent or Service; notwithstanding that the Tenant holdeth Lands in which he may distrain, *38 H. 6. 28. 5 Ca. f. 92. and see 33 E. 3. Scoury 296.*

But the Lord cannot break open the Gates or break down Fences and Inclosures to take a Distress, *Ca. on Lit. 161. a.*

If a Man seized of Lands in Fee maketh a Lease for Life thereof, and afterwards he granteth a Rent-Charge, though the Grantee

Grantor cannot distrain the Cattel of a Stranger who is in possession of the Land for the Rent, yet if the Grantor Cattel come upon the Land he may then distrain them for the Rent, 1 *Brentnall* f. 32.

If there be Lord and Tenant, and the Tenant pay the Lord a greater Rent than is due to him, and that voluntarily without Coercion of Distress, in this Case the Lord having gained Seisin may distrain for such Surplussage as Rent; and the Tenant cannot avoid it upon the Lords Avowry because of the Seisin of the Rent; But in such Case he may have his Remedy by a Writ of *Nil in iustis* *averet*, upon the Sentence of *Magna Charta*, chap. 12. *F.N.B.* 21. *Co. 2 part Inst.* f. 21. *Flower* *Case* 94, 243.

But note this Rule holdeth not in the Case of a Successor or Issue in Tail, for they may avoid such Imposition in an Avowry; or if the Imposition be of another nature than the Service, or that it be gained by Coercion of Distress, in such Case the Tenant may avoid such Seisin in an Avowry, *Co. Inst.* f. 21. 12 *E.* 4. f. 7. *h.* 4 *E. 2.* *Jefferies* 202.

A Rent-Charge was granted for years with a *Novum pignus*, and Clause of *De Arch*

treels if it were not paid at the day, and the Rent was behind and the years incurred, and it was moved if the Grantee might distrain for the *Nomine pene*, the years being incurred, and the Opinion of the whole Court was that he could not distrain for the *Nomine pene*, for that did depend on the Rent, and the Distress was gone as to both, *Pasch. 29 Jac.* in *C. B. Tatter and Fryers Case, Winches Rep. f. 71.*

If an Horse or Beast come into a Mans Ground as an Estray, he may not work them; neither may a Man work a Distress, for he hath neither property nor possession in *Jure*; but if a Man hath an Horse, Ox or Cows in pawn, he hath a special property in them, and may work and use them in such sort as the Owner may do, *M. 7 Jac.* in *C. B. Moor and Corbams Case, Owens Rep. f. 123.* and *Hill. 3 Jac.* in *B. R. Rex. 1070. Bayshew and Grwards Case, 2 Cro. 147.*

If the Tenant fore-stall the way with force and Arms, and threaten in such manner that the Lord dares not come to demand or distrain for the Rent, or if there be no Distress on the Ground, nor none ready to pay the Rent; then in this Case the Lord may have a Writ of *Nevel Disseisin*.

seisin against the Tenant, and recover his Rent and Arrearages; and if the Rent be behind another time he may have a *Redisseisin*, and recover double damages, Co. on *Lit. f.* 153. b. and 161. b. *Fleta* l. 1. c. 42. *Neys Maxims* p. 46. and see 29 *Ass.* 49.

CHAP. VIII.

Of Rescous, where it shall be lawful.

Rescous is an old French word coming from *Rescouter* (to rescue) *Rescouter* that is to take from, or to deliver, and is a taking away or setting at liberty against Law a Distress taken, or a person arrested by the Process or course of Law, Co. on *Lit. f.* 160. b. 37. a. 100. a.

And all is one to the point of the Distress, to rescue the Distress after it is taken; or to resist beforehand and withstand the taking; but yet it is no Rescous till the Distress be taken, Co. on *Lit. f.* 160. *Kelway* 20. 16 H. 6. *Disseisin* 9. 21 H. 40. 2. *Finch* 4. 41 c. 16. p. 310. *F. N. B.* 101. C. 102. F. 2. *assise* 1. 20. 20. 20.

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If the Lord distrain when there is no Rent Arrear, the Tenant in such Case may make Rescous and hinder, 34 R. 1. Rescous 10 Ca. 4. Rep. f. 11.

And now by the late Statute 2 H. 6. c. 12. If any Distress and Sale be made by virtue or colour of that Act for Rent pretended to be due where in truth no Rent is arrear or due the Owner, of the Goods distrained and sold, his Executors or Administrators may by Action of Trespass or upon the Case, so be brought against the person or persons so distraining, or any of them, their Executors or Administrators recover double the value of the Goods or Chattels so distrained and sold, together with full Costs of Suit.

Or if the Lord come to distrain, and the Tenant tender the Rent to him, and yet notwithstanding the Lord will distrain, then the Tenant may make Rescous, Ca. on Litt. f. 160. b. 7 E. 4. 24. b.

If the Lord will distrain *Agria Comra*, Beasts of the Plough, when there is at the same time a sufficient Distress to be taken besides; or if the Lord distrain any thing that is not distrainable, either by the Common Law or by any Statute, then the Tenant may make Rescous, Ca. on Littleton f. 161. a. *Resal Tit.*

Ten. Distr., 10. *Magna Charta* fol. 122.

If the Lord come to distrain and see the Cattel within his Fee, and the Tenant or some other person, to prevent the Lord to distrain, drives the Cattel out of the Fee of the Lord, into the High-way or into anothers Ground, yet may the Lord freshly follow, and distrain the Cattel though it be in the High-way, and the Tenant cannot make Rescous: for in Judgment of Law the Distrain is taken within his Fee, and so shall the Writ of Rescous suppose. But if the Lord coming to distrain had not the view of the Cattel within his Fee, though the Tenant drive them off purposely to prevent the Distrain, or if the Cattel of themselves after the view go out of the Fee, or if the Tenant after the Lords View of them, removeth them for any other cause than to prevent the Lord of his Distrain, in such cases the Lord cannot distrain out of his Fee, for if he do the Tenant may rescue, *Co. on Lit.* f. 161. *Co. 3 Inst.* f. 131, 132. 3 E. 4. 6. b. *Plowd.* 385. 9 E. 4. 34. b. 16 E. 4. 10. 6 R. 2. *Rescous* 11. 45 E. 3. 20, 21. 33 H. 6. 51. 9 Co. f. 82. *Kitchin* p. 52. b. 61 H. 7. 40. *F. N. B.* 100. *Gr. Compl. Abr.* p. 100. *Huglin* 271 *Abr.* p. 717. 1021.

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If the Rent be behind and the Lord distrain the Cattel in the High-way within his Fee, the Tenant may make rescous (except it be in the case aforesaid, upon the Tenant driving out after view) for no Man may distrain in the High-way, except the King and his Officers having special Authority, *Co. on Lit. f. 160. and Co. 2 Inst. f. 132. 17 E. 3. 43. Rastal Tit. Distress, 5 Wingate Abr. Stat. p. 132.*

If the Lord distrain out of his Fee in Lands not holden of him, the Tenant may make rescous, unless in the cases aforesaid, *Co. on Lit. f. 161. a.*

If a Man come to distrain for Damage Feasant, and for the Beasts in his Soil, and the Owner chases them out on purpose before the distress taken, the Owner of the Soil cannot follow and take them; for if he do, the Owner of the Cattel may rescue them: for they must be Damage Feasant at the time of the distress taken, and in this case the Owner of the Soil is left to his Action of Trespass, *Co. on Lit. 161. a. 16 E. 4. 10. b. 2 E. 2. Avening. 182. Noy. Max. p. 46. 9 Co. f. 22.*

If the Husband distrain for Rent due to his Wife *pro sola fuit*, and rescous be made, he alone may have a Writ of Rescous, or at his Election join his Wife with him in the

the Writ, *Penner and Parkers Case, Moors Rep. f.*

If rescous be returned without shewing the place where rescous was made, it is void, *Abr. Moors Rep. 112. pl. 562.*

If the Tenant lock up his Gates, and inclose his Grounds so that the Lord cannot come to distrain, this is a Disseisin, if the Lord have had actual possession, and the Rent is behind; for the Lord cannot break open the Inclosures to take a distress. *Co. on Lit. f. 16 R. 2. 10 E. 3. 9. 49 E. 3. 14. 7 E. 3. 3. 11 H. 7. 28. 8 Aff. 18. 10 E. 4. 2.*

CHAP. IX.

Of Replevins, when and where to be sued out.

Replegiare is compounded of *Re* and *Plegiare*, as much as to say, to deliver upon Pledges or Sureties, *Caon Lit. 145. b.*

Where Goods are distrained and impounded, the Owner of the Goods may have a Writ *De Replegiare facias*, whereby the Sheriff is commanded taking Pledges of prosecuting to deliver the Goods distrained to the Owner: and this is by the Common Law,

Law, Plac lib. 2. cap. 40. Co. on Lit. 145. b. Glauvil lib. 12. cap. 12.

But the quickest way is to complain to some of the Sheriffs Deputies in the County, who keep a Seal for that purpose; and they will grant a Replevin, and must take Pledges of prosecuting, and also *Plagus de return habendo*, that is, to deliver the Goods again to the Party that distrained, if the Adverser be found against him that replevieth, and this is by the Statute of *Westm. 2. c. 2. Co. on Lit. 145. b. Rastal Tit. Replevin 2. Compl. Ann. p. 127. Finch lib. 4. c. 19. p. 317.*

If the Sheriff or his Deputy take insufficient Pledges, they are no Pledges within the Statute; and he shall be charged upon the return if it be awarded, for the value of the Cattel by him delivered, *13 E. 1. c. 2. 2 Inst. 340.*

If the return of Pledges made by the Sheriff be upon a Writ of Replevin directed to him; then in such case if he that replevieth be Nonsoit, &c. and a Writ of *return habendo* is awarded, upon which the Sheriff returns *averia elongata*, &c. here the Party that distrained shall have a Writ to have return of the Beasts of the Pledges. But if the deliverance writ by Plaintiff made to the Sheriff without Writ, then there will be no such Writ granted against the Pledges, because

cause in such case no Pledges do appear to the Court. And note, That if the Sheriff return *Nihil*, when a Writ of Return is awarded against the Pledges, then he that distrained may have a *Scire facias* against the Sheriff, *quod reddat ei res suas*, or *res suas*; and the same remedy is against a Bailiff of a Franchise or Liberty, Co. 2 Inst. 340. *Plow lib* 2. c. 38. 2 H. 6. 13. 8 E. 3. 73. 39 E. 3. 28. 9 H. 6. 42 & 43. *Brownlow* 1 p. 101.

If the Writ of Replevin abate for matter apparent by mis-information, or other default of the Plaintiff, or he that distrained plead a Plea which the Plaintiff confesseth, so that a *Returne habenda* is awarded, in this case if the Owner see cause he may replevy the Goods again, but if the Plaintiff be non-suit in the first Replevin, or that a second return be awarded to him that distrained, in such cases the Owner can have no more Replevins, for then the Goods shall remain inreplevible, and this return inreplevible cannot be awarded by Court Baron, nor County Court, nor any Court that is not the Court of the Kings, before his Justice, Co. 2 Inst. 340. 21 E. 3. *Return de suis* 31. 20 E. 3. *ibid.* 5. 41 E. 3. *ibid.* 14. 48 E. 3. 10. 2 H. 3. 4 H. 6. 8.

Now

Now if after such return irreplevisable, the Owner be minded to have the Goods again, then he must sue out a Judicial Writ called a *Second Deliverance*; and if he be Non-suit in this Writ, or the Plea be discontinued, or the Writ abate, or if he prevail not in his Suit, then the Return irreplevisable shall be granted: and note, This Writ of *Second Deliverance* shall not be granted where the Plaintiff is overthrown by Verdict or Judgment given against him upon a Demurrer in Replevin; for then neither a new Replevin nor any *Second Deliverance* shall be granted, but the Return shall be irreplevisable, *Co. 2 Inst.* 340. 341. 5 *E. 2. Rot. ds. Murr.* 64. 10 *E. 2. ibid.* 5. 8 *E. 2. 35. 6 E. 3. 37.*

But if Return irreplevisable be awarded, the Owner may come to the Defendant and offer the Arrarages, &c. and if the Defendant refuse then to deliver the distress, the Plaintiff may have an Action of Detinue, and by that means recover them, for they are in nature of a Gage, *Co. 2 Inst.* 341.

By the Statute of the 1 and 2 P. and M. c. 12. every Sheriff at his first County day, or within two months after he receives his Patent, is to depute and proclaim in his Shire Town four Deputies to make Replevines, not dwelling above twelve miles distant

distraint one from another; and if he fail herein he forfeits 5*l.* every month they are wanting, to be divided between the King and Prosecutor, *Rastal Tit. Distresser* 11. *Wingates Abr. Stat. p. 133. Finch lib. 4. c. 19. p. 318.*

When the distress is taken and impounded within a Franchise or Liberty that hath return of Writs, whether the matter be before the Sheriff by Writ or by Plaint, he ought to make a Warrant to the Bailiff of the Liberty to make deliverance; and if he make no answer, or return that he will make no deliverance, or the like, then the Sheriff, by force of the Statute of *Mansbridge, Chap. 21.* and *Westm. 2. Chap. 17.* may enter into the Liberty and make deliverance; and if the distress were taken without the Liberty, and impounded within the Liberty, then the Sheriff may enter and make deliverance, and need not first to make a Warrant to the Bailiff of the Liberty, *Co. 2 Inst. f. 140 and 194. Fleta, lib. 2. cap. 39. Regis, 83. F.N. B. 68.*

If a distress be carried to a Fort, or Castle or Park, or other place of strength, and the Sheriff, upon plaint made to him, makes his Warrant to his Bailiff to make deliverance, who returns that he cannot have view of the Castle to make deliverance, then the

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Sheriff

Sheriff ought to enquire of that by inquest of Office, and if it be found that the Beasts be not to be had, then he ought to award a *Witbernem* to the Bailiff, to take as many of the parties Beasts that distrained, or as much Goods in his keeping, until he make deliverance of the first distress; and if the Sheriff will not do it, then an Attachment shall issue against the Sheriff to the Coroners, and after that a distress; and if he grant a *Witbernem*, and a *Nihil* is returned upon it, then shall go out an *alias & plures*, and so infinitely; or if the owner of the Beast make suit to the Sheriff to go and demand the distress, and he doth so, and it is denied to be delivered, then the Sheriff may take *Posse Comitatus* with him and break the House, Castle, Fortrefs, Park, or other place of strength, and make deliverance, but he cannot totally demolish the Castle, unless it be upon a Suit on the Kings behalf. *Brownl. 1 part 167. Co. 2 Inst. f. 193, and 194. 5 Co. f. 92, 93. Britton 54. b. Fleta lib. 2. cap. 40. Rastal Tit. Distresses 7. Compl. Attorney p. 125.*

The Sheriff may take a Plaint upon the Statute of *Marlbridge*, out of his County Court (which he ought to enter in his County Court) and make Replevin presently, for it is against the scope of the Statute, and should

should be inconvenient for the Owner to
forbear his Cattel till the County day,
Co. on Lst. f. 145. b. and Co. 2 Inst. f. 139.
F. N. B. 69. 21 E. 4. 66. b.

If he that distrained the Beasts see cause,
he may have a Writ of *Recordare*, and so
remove the Suit upon the Replevin out of
the Sheriffs County Court, or other inferior
Court into the Common Pleas Court; and
if the Plaintiff declare not, he that dis-
trained may have a *Retorno habendo*, and if he
declare not still, then he that distrained shall
have a Writ to enquire of Damages, *vide*
Co. 2 Inst. f. 339.

In a Replevin by Plaint, the Sheriff may
hold Plea in his County Court, although the
value be of twenty pounds or above, by
force of the Statute of *Marlbridge*, but in
other Actions he shall hold plea under forty
shillings, *Co. 2 Inst. f. 139.*

If a Replevin be depending by Writ out
of the Chancery, the Plaintiff or Defendant
may remove the Plea by a *Pone*; and if the
Plea be depending in the County, the Plain-
tiff may remove the same without cause,
but the Defendant cannot remove the same
without cause, which must be inserted in the
end of the Writ, *Co. 2 Inst. f. 339. Regist.*
84. F. N. B. 69.

If a Man by his Deed grant a Rent with clause of distress, and grant further that he shall keep the Goods distrained against Gages and Pledges, until the Rent be paid; yet shall the Sheriff Replevy the Goods distrained; for it is against the nature of such distress to be irrepleviable, and by such an intention the current of Replevins should be overthrowen to the hindrance of the Kingdom. *Co. on Lit. f. 145. b. Bract. lib. 4. f. 233. a. 1. 31 E. 3. Gage Deliver 5. Co. 2 Inst. f. 140.*

If the Beasts of divers several Men be distrained, they cannot join in a Replevin, but every one must have a several Replevin; for in a Replevin it is a good Plea to say that the property is to the Plaintiff and to a Stranger, and where there be two Plaintiffs, that the Property is to one of them, *Co. on Lit. f. 145. b. 28 E. 3. 92. 3 H. 4. 12. 34 H. 6. 37.*

If a Man take a distress in one County and drive it into another, the Owner of the Cattel may sue a Replevin in which County he pleaseth, *Complacit Assor. p. 131.*

If the Cattel of a Feme sole be taken, and afterwards she taketh an Husband, now he alone may sue a Replevin, *Complacit Assor. p. 131.*

In

Ch. 9. *Land-Lord and Tenant.* 213

In a Replevin if it be of two Chattels, one living and the other dead, the living shall be first demanded, *Finch lib. 1. cap. 3. p. 25.*

If the Plaintiff in a Replevin do not set out the place where the distress was taken as well as the Town, his Declaration will be naught, and the Avowant may overthrow him upon a Demurrer, *35 H. 6. f. 40. and Trin. 19 Jac. C. B. Rot. 2508. Read and Hawk's Case, Hobart's Rep. f. 16.*

The Tenant may have a Replevin against the Lord that did wrongfully distrain, tho' the Beasts be come back again to the Owner, because he can have no Action of Trespass against the Lord, *Finch lib. 1. cap. 3. p. 46. F. N. B. 69. b. 4 H. 7. 40. 11 H. 7. 10. Compleat Attorney p. 131.*

A Replevin must be certain in setting forth the number and kinds of the Cattel distrained, or else it is not good, *Trin. 23 Car. 1. B. R. Regist. Pract. p. 193.*

And Note well, that it is a general Rule, That the Plaintiff in the Replevin must have the property of the Goods in him at the time of the taking, for if the Defendant (that is, he that distrained) claim property, then the Sheriff cannot upon complaint to him made, grant a Replevin; but in this Case he that would Replevy the Goods must procure a

Writ *De proprietate probanda*, directed to the Sheriff to try the property; and if it be found for the Plaintiff, then the Sheriff to make deliverance; and if for the Defendant, then the Sheriff can proceed no farther, unless the Plaintiff get a *Replegiari facias* to the Sheriff; and then although the Defendant claim the property, yet upon the Sheriffs return of the property, &c. it shall notwithstanding proceed in the Court above, where the property shall be put in issue and finally tried, *Co. on Lit.* 145. b. 3 E.3 74. 6 H.4. 8 and 39. 9 H.6. 39. 20 H. 6. 19. 31 E.3. *Replevin* 35. 31 H.6. *Prop. Probanda* 5. 2 *El. Dyer* 173. *Sheppards Sur. County Judic.* 50, 51 and 52.

Note, There are two kinds of Properties, that is, a general Property which every absolute Owner hath; and a special property, as of Goods pledged, or taken to manure ones Lands, or the like; and of both these a *Replevin* doth lie, *Co. on Lit.* 145. b. 42 E. 3. 18. 11 H.4. 17. 7 H.4. 17. 48 E. 3. 20. *Sheppards Sur. County Judic.* 46.

But a Man cannot claim Property by his Bailiff or Servant: and the reason is, for that if the claim fall out to be false he shall be punished for contempt, which the Lord cannot be unless he make claim himself; for *Nemo punietur pro alieno delicto*, 5 E.3. 38.

11 H.

Ch.9. *Land-Lord and Tenant.* 315

11 H.4.4. 17 E.2. *Prop. Proban.* 6 Co. on
Lit. 145. b.

But note well, that several of these Cases upon Replevin, *Returno habendo*, second Deliverance, &c. are but only to shew how the Law formerly of late stood; and some of them are now quite taken away, and many of them much altered by a late Act of Parliament made at *Oxford* in the seventeenth year of our Sovereign Lord King *Charles* the Second: where it is enacted, That whensoever any Plaintiff in Replevin shall be *non suit* before the Issue joined in any Suit of Replevin, by Plaint or Writ lawfully returned, removed or depending in any of the Kings Courts at *Westminster*, that the Defendant making a suggestion in nature of an Avowry or Cognizance for such Rent to ascertain the Court of such cause of distress, Then the Court upon his Prayer shall award a Writ to the Sheriff of the County where the distress was taken, to inquire by the Oaths of 12 good and lawful Men of his Bailiwick, touching the Sum in Arrear at the time of such distress taken, and the value of the Goods or Cattell distrained; And upon fifteen days notice given to the Plaintiff or his Attorney in Court, of the sitting of such Enquiry, the Sheriff may inquire of the truth of such matters contained in the Writ,

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by

by the Oath of twelve Men, &c. And upon return of the Inquisition, the Defendant (that is, he that distrained) shall have Judgment to recover against the Plaintiff the Arrearages of such Rent in case the Goods or Cattle distrained shall amount unto that value; and in case they shall not amount to that value, then so much as the value of the said Goods and Cattle shall amount unto, together with his full costs of Suit, and shall have execution thereupon by *Fieri facias* or *Elegit*, or otherwise, as the Law shall require. And in case such Plaintiff shall be non-suit after Cognizance or Avowry made, or issue joined; or if the Verdict shall be given against such Plaintiff, then the Jurors that are impanelled or returned to inquire of such Issue shall at the Prayer of the Defendant inquire concerning the Sum of the Arrearages, and the value of the Goods or Cattle distrained: And thereupon the Avowant, or he that makes Conuſance shall have Judgment for such Arrearages, or so much thereof as the Goods and Cattle amount unto, together with his full costs, and shall have Execution of the same as abovesaid.

And if the Judgment in any of the Courts aforesaid, be given upon Demurrer for the Avowant, or him that maketh Conuſance for any Rent, the Court shall at the Prayer

Prayer of the Defendant Award a Writ to inquire of the value of such distress; and upon the return thereof Judgment shall be given for the Avowant, or him that makes Conuſance as aforeſaid, for the Arrears alledged to be behind, in ſuch Avowry or Conuſance, if the Goods or Cattle ſo diſtrained ſhall amount to that value. And in caſe they ſhall not amount to that value, then for ſo much as they amount unto, together with his full coſts of Suit, and have Execution thereof as aforeſaid.

And in all caſes aforeſaid where the diſtreſs is not of the value of the Rent Arrear, there the Party to whom ſuch Arrearages are due, his Executors or Administrators, may from time to time diſtrain again for the ſidue of the ſaid Arrears; which ſomewhat a Man could not do, for he might not diſtrain twice for one Rent, for it was accounted him folly that he took not a ſufficient diſtreſs at the firſt; but now by this new Statute, that and ſeveral other Advantages are taken away from the Tenant.

C H A P. X.

Of Avowries, a word or two concerning
the same.

A Vowry is where one taketh a distress for Rent, or other Thing, and the Owner of the Goods sueth out a Replevin, then he that taketh the distress shall justify in this Plea for what cause he took it: and if he took it in his own right he must shew that, and so avow the taking, and that is called his Avowry, *Terms de Ley de verb. Avowry.*

But if he took the distress in or for the right of another, then when he hath shewed the cause, he must make Conufance of the taking as Bailiff or Servant to him in whose right he took it, *Terms de Ley.*

The Lord may avow the taking a distress, as in Lands holden of him within his Fee, without naming any Person in certain: and this is by the Statute of 21 H. 8. c. 9. Co. on Lit. 269. b. See Hob. Rep. 108. in *Brown and Goldsmiths Case.*

But by the Common Law they could not do this, but were forced to avow upon a Person in certain, which proved often very prejudicial to the Lords: for by the secret Fines,

Re-

Ch. 10. *Land-Lord and Tenant.* 219

Recoveries, Grants and Feoffments, which the Tenants made purposely. to defraud their Lords, they thereupon were put from the knowledge of their Tenants, upon whom by order of Law they should make their Avowry; and so to prevent this Inconveniency the said Statute was made.

But the Lord may Avow still by the Common Law if he will; and although he do avow by the Statute upon the Lands generally, as in Lands, &c. within his Fee or Seignior, yet nevertheless he must alledge Seisin by the Hand of some particular Tenant in certain within forty years, *Co. on Lit. 269.b. vide M. 6 Jac. Co. 8 Lib. Sir William Fosters Case, 32 H.8. c.3. Wingates Abr. Stat. 295.*

In an Avowry made according to the Statute, every Plaintiff in the Replevin or second deliverance, be he Termor or other, may have ever Answer to the Avowry that is sufficient, and also have aid and every other advantage in Law, Disclaimer only excepted: for disclaim he cannot, because the Avowry is made upon no Person certain, *Rastal tit. Avowry and Wingate Abr. 34.*

If the Lord come to distrain, and the Tenant chase his Beasts which were within the Lords view, out of the Land holden, &c. yet if the Lord freshly follow, and take them, although

though it be out of his Fee and Seigniorie, he may by the Statute avow the taking as in Lands holden of him within his Fee and Seigniorie, *Co. 9 Lib. 22. in Case de Avowry.*

If there be Lord and Tenant, and the Rent is behind for divers years, and the Tenant makes a Feoffment in Fee, if the Lord accept the Service or Rent of the Feoffee due in his time, he shall lose the Arrearages due in the time of the Feoffor; for after such acceptance he shall not avow upon the Feoffor, nor upon the Feoffee for the Arrearages in the time of his Feoffor: But if the Feoffor dieth albeit the Lord accept the Rent or Service by the Hands of the Feoffee due in his time, he shall not lose the Arrearages; for now the Law compelleth him to avow upon the Feoffee, and that which the Law compelleth him unto shall not prejudice him, *Co. on Eit. 269. b. and see Ca. 3 Rep. 65, 66. in P. nunt's Case.*

In a Replevin the Defendant avowed and shewed that the Dean and Chapter of *Westminster* were seised in *Fare Collegii* (but shews not of what Estate in certain) and being so seised made a Lease to the Avowant for, &c. who let part of his Term to the Plaintiff, and for Arrears of Rent avowed, and it was held to be no good Plea, and therefore Judgment given against the Avowant,

Ch. 10. *Land-Lord and Tenant.* 211

ant, *Pascb. 2 Car. 1. Wads and Marshes Case, Latches Rep. f. 12.*

A Man may distrain and avow, or make Cognizance for a certain Sum, as ten shillings *pro certo Leto, Pasc. 5 Jac. C. B. Bullens Case, 6 Co. f. 77, 78.*

A Man may distrain and avow, or make Conusance for an Amerciament imposed upon an Inhabitant in a Court-Leet, for refusing to be Constable, *Ex 8 Rep. in Gristies Case.*

A Man may distrain and avow, or make Conusance for an Heriot, *Talboys Case, Co. 8 Rep. 105.*

A Man may distrain and avow, or make Conusance, for an Amerciament for not doing Suit to his Court, or Suit at his Mill, *Co. 11 Rep. 44, 45.*

There are four manner of Avowries :

1. Upon his very Tenancie.
2. Upon his very Tenant by the manner, where the Tenant hath but a particular Estate.
3. Upon his Tenant by the manner, where the Lord hath but a particular Estate ; and these three are by the Common Law.
4. Upon the matter in the Land, as within his Fee. And this by the Statute and safest way, *Vide Aisconghs Case, 9 Jac. Co. 9 lib. 135, 136. 9 Eliz. Dyer 237. 20 E. 3. Avowry 131.*

CHAP.

C H A P. XI.

*Of Waste : What shall be Waste in Houses,
Gardens, Woods, Pastures, &c. and what
not.*

IF Lessee for life or years, in Dower, &c. pull or prostrate down the Houses, or suffer them to be uncovered, whereby the Spars or Rafters, Planchers or other Timber of the Houses are rotten, this is waste, 34 E.3. *Waste* 143. *vide* 10 H.7.2.b. 12 H.4.4. Co. 1 Inst. 53. a. *vide* *Herns Law of Convey.* 51.

If the House be uncovered when the Tenant cometh in, it is no waste in the Tenant, if he suffer the same to fall down, Co. *ubi supra.* *Herns Law of Convey. ubi supra.*

But although the House be uncovered and ruinous at the time of the Tenants coming in, yet if he pull it down, it is waste, unless he do build it again, 40 Aff. pl. 22. 23 H. 6.24. 29 E.3.33. Co. *ubi supra.* *Compl. Att.* 166. *Hern, ubi supra.*

If Glass-windows (though glased by the Tenant himself) be broken down or carried away, it is waste ; for the Glass is part of the House, *Vide* Co. 4 lib. f.6 in *Harlackendens Case*, *Swinburns Wills* 3 part, sect. 6. f.165. and *Hern, ubi supra.*

And

And so it is of Wainscote, whether it be fixed to the Walls or Posts of the House with great Nails or little Nails, Screws or Pins, it is all one, if it be fixed to the Freehold once, it is waste to take it away again, *Co. 1 Inst. 35. a. vide Keilway 88. and Harlackendens Case, ubi supra. 22 H. 6. 18. 22 E. 4. 18. Swinburn, ubi supra, Compl. Art. ubi supra.*

The same Law of Benches, Doors, Windows, Furnaces and the like, annexed or fixed to the House, either by him in the Reversion or the Tenant, *Co. 1 Inst. 53. a. 10 El. Dyer 272. 42 E. 3. 6. Noys Maxims 33.*

The railing of a new Frame of a House which was never covered, is no waste, *40 Ass. pl. 22. Br. waste 117. Kitchen 242. b.*

The House uncovered by sudden Tempest or otherwise, it is no waste in the Tenant, but if he let lie so till the main Timber be rotten, then he shall be punished in waste, for not repairing it in time, *12 H. 4. 4. Kitchen 241. b. Co. ubi supra, 19 E. 3. Waste 30. Herms Law of Convey. 52.*

If the House fall by sudden Tempest, or be burnt by Lightning, or prostrated by Enemies, or the like, without any default of the Tenant, or was ruinous at his coming in, and fall down, this is no waste, *Co. ubi supra, vide in Co. 4 lib. f. 63. Harlackendens Case, Dr. and Stud. lib. 2. c. 4.* And

And the Tenant may build the same again with such Materials as remain; and with other Timber growing upon the Ground, (which he may take) for his Habitation; but he must not make the House larger than it was, for if he do, he is punishable in waste, *Co. ubi supra*, 43 E. 3. 6. 11 H. 4. 32. 22 H. 6. 18. *Herns Law of Convey.* 52.

Though there be no Timber growing upon the Ground, yet the Tenant at his peril must keep the Houses from walling, *Co. ubi supra*, 44 E. 3. 21. 38 Aff. pl. 1. *Compl. Att.* 166. *Herns Law of Convey.* 31.

If the Tenant build a new House where none was before, it is waste; and if he suffer it to be wasted, it is a new waste, *Co. ubi supra*, *Kitchin* 242. a. 42 E. 3. 21. 12 H. 4. 6. 17 E. 3. waste 118.

If the Tenant either do or suffer waste to be done in the Houses, yet if he repair them before any Action brought, he is clear; but he cannot plead *quod non fecit vastum*, but the special matter, *Co. 1 Inst.* 53. a. 40 E. 3. 6. 38 Aff. pl. 1. *Vide Kitchin* 242. a. *Herns Law of Convey.* 33. and 52.

The pulling down of a Stone-wall or Mud-wall of an House is waste, *Kitchin ubi supra*, 10 H. 7. 2. b. *Compl. Att.* 166.

Ch. II. Land-Lord and Tenant. 223

A Wall uncovered when the Tenant comes in, is no waste if he suffer it to decay, *Co. libi supra.*

If the Tenant of a Dove-house, Park, Warren, Vivary, Estanges, &c. do take so many, as such sufficient store be not left as he found when he entred, this is waste; and to suffer the Pale to decay, whereby the Deer are dispersed is waste, *Brit. 134. 5 R.2. waste 97. Plow Com. 322. Hob. Rip. 234. Co. libi supra, Hens Law of Convey. 52. Co. 2 Inst. 304.*

If the Tenant suffer the Houses to be wasted, and then sell Timber to repair them, this is a double waste, *P.N.B. 59. k. Kitchin 242. b. Co. 1 Inst. 53. b.*

If a Termor fix a Furnace, and not to the Walls nor Posts of the House, if he take it way within his Term, it is no waste, for the House is not impaired, *21 H.7. 26. per King. smel.*

If Tenant in Fee fix a Furnance or Fat in the middle of the House, the Heir shall have it, and not the Executors, *Kitchin libi supra.*

If an House fall by a great Wind or Tempest, the Lessor shall have the Timber, for it is no waste, and the Lessee is not bound to re-edifie it, *34 E. 3. 11 H.4. 21.*

If

If the Tenant take away a Lead or Fats fixed to the House, it is waste.

If a Stable be ruinous at the time of the Lease made, and fall, the Tenant may cut down Trees to make a new one; but if there were none there before, it is waste if he cut Trees to build one, 11 H. 4. 32. *Kitchin* 242. b.

The Tenant may cut Trees to amend the House and make Reparations; but where it is in decay through his own default, there if he cut Trees to repair it, is waste, *Kitchin ubi supra*, *Fitz.* 59. k.

It is to be observed, that there is Waste, Destruction and Exile. Waste properly is in Houses, Gardens and Timber-trees, (*viz.* Oak, Ash and Elm, and these are Timber in all places) either by cutting of them down or lopping or topping them, or doing any Act whereby the Timber may decay, *Co.* 1 *Inst.* 53. a. *vide Herns Law of Convey.* 52.

Also in Countries where Timber is scant, and Beeches or the like are converted to building for the Habitation of Man, or the like, they then are also counted Timber, and cutting of them by the Tenant is waste, *Co.* *ubi supra*, *Hern ubi supra*. See *Countess of Cumberland's Case*, *Moors Abr.* 237. pl. 1037.

Ch. XI. Land-Lord and Tenant. 227

If the Tenant cut down Timber-trees as is aforesaid, or such as are accounted Timber, it is waste; and if he suffer the young Germans to be destroyed, this is Destruction, and punishable in waste also, 22 H. 6. 12 a. *E.N.B. 59. M. Co. ubi supra.*

If the Tenant cut down Underwood, (as he may by Law) yet if he suffer the young Germans to be destroyed, or stub up the same by the Roots, so that it can grow no more, this is waste, 20 E. 3. *waste* 32. 10 H. 7. 2. 42 E. 3. 6. b. 5 E. 4. 100. 41 E. 3. *waste* 82. 12 E. 4. 1. and Co. 1 *Inst.* 53. a.

Cutting down of Willows, Beech, Aspe, Maple or the like, standing and growing in the defence and within the view of the House is waste, 40 E. 3. 15. b. 4 E. 6. *waste*, Br. 136. *Kitchin* 243. a. Co. *ubi supra. Compl. Att.* 165. *Herns Law of Convey.* 52.

Beech of the age of 20 years, or under 20 years, may not be cut by Tenant for life or years, for it is waste, unless it be in some Countries where there is plenty of Timber, *Temps H. 8. Br. waste* 184.

A Man cannot assign waste in the cutting of Beeches of the age of 7 or 8 years, 13 H. 7. 21.

Cutting of Hasels which grow not under the great Trees, but in a quarter of the Wood by themselves is waste, 40 E. 3. 25.

25.b. 10 H. 7. 2. F. N. B. 60. e. *Kitchin* 243. a.

If there be a Quick-set Fence of Whitethorn, and the Tenant stubs it up, or suffers it to be destroyed, it is waste, Co. 1 *Inst.* 53. a. 46 E. 3. 17. 9 H. 6. 10. 12 H. 8. 1 *Kitchin* 244. a.

The cutting of dead Wood which is dry and hollow, and neither bears Fruit nor Leaves in Summer, is no waste, Co. *ibid.* *supra*, and *Kitchin ubi supra*, F. N. B. 59. m. 16 *Ellz.* *Dyer* 332.

The Tenant may take sufficient Wood to repair the Walls, Pales, Fences, Hedges and Ditches, as he found them; but he can make no new ones but it will be waste, Co. 1 *Inst.* 53. b.

He may also take sufficient Plough-bore, House-bore and Fire-bore, as is shewed before in Chap. 5. p. 91.

If the Tenant cut down Trees for Reparations and sell them, and after buyeth them again and employs them about necessary Reparations, yet it is waste by the Vendition, for he cannot sell Trees, and with the Mony cover the House, Co. 1 *Inst.* 53. b. *Compt. Ass.* 167. *Herns Law of Convey.* 58.

Barring of the House by negligence or mischance is waste, Co. *ibid.* and *Hern ubi supra*.

Ch. 11. Land-Lord and Tenant. 229

A Termor may take Beech, Ashes and the like, which are well seasonable and have been used to be felled every 20, 16, 14 or 12 years, and it is no waste, for it is called *Sylvia* *india*, 4 E. 6. Br. waste 136.

Cutting of Beeches and selling them is waste; but the Termor may cut them to repair upon the same Land, but not to make Reparations upon other Lands, 7 H. 6. 40. *Kitchin* 243.b.

Cutting Beeches of 10 years old seasonable for House-bote, is not waste; but where they are of the age of 20 years, and fit for main Timber, that is waste, 11 H. 6. 1. *Sed vide* 4 E. 6. 136. *Kitchin* 243.a.

Where Oaks are cut and the young Germans suffered to be eaten with Cattle, so that they will be but Shrubs, this is waste, *Kitchin* 243.b. 11 H. 6. 1. *Compl. Att.* 167.

One may assign waste in the cutting of 20 Oaks and also in their Stocks, to wit, in not springing them again; for if they were saved, they would be Timber, and for that they are not saved, it is waste, 22 H. 6. 14. *Kitchin* 243.b.

A Termor may cut seasonable Wood, which is wont to be cut every 20 years, or within such time, *F.N.B.* 59.m.

Cutting of White-thorn is Waste, but not the cutting of Black-thorn, 46 E. 3. 17. *Kitchin* 244.a. Where

Where there is a Wood in which groweth nothing but Underwood, the Tenant cannot cut all; *contra* of Underwood where Ash, Beech, and other principal Trees grow amongst them, for there he may cut all the Underwood, 4 E. 6. Br. waste 136.

Where Apple-trees are blown down and after become dead, the Tenant may cut them for Fewel, 7 H. 6. 40. Kitchin 244. a.

Cutting of Apple-trees, though they lie all along on the Ground, yet if they bear Fruit, it is waste, Kitchin, *ibid.* 44 E. 3. 44. Compl. Att. 168.

Cutting of Damaskin-trees is Waste, 10 H. 7. 2.

If the Tenant cut down any of the Fruit-trees growing in the Garden or Orchard, it is waste, 7 H. 6. 38. 44 E. 3. 44. Ca. 1 Inst. 53. a.

But if such Trees grow in any place of the Ground out of the Garden or Orchard, it is no waste if he cut them, Co. 1 Inst. 53. a. *Vide* *Herns Law of Convey.* 52.

Digging for Gravel, Lime, Clay, Brick-earth, Stones, or the like, is waste, Co. *ibid.* b. F. N. B. 59. n. *Herns Law of Convey.* 53.

And so it is if the Tenant dig for Mines of Metal, Coals, &c. in the Earth, and not open at the time of the Lease made, *Idem ibid.* 41 E. 3. waste 8. Hob. Rep. 234. *Herns ubi supra.*

But

But he may dig for Gravel or Clay for Reparations of the House, and it is no Waste, *Co. ubi supra, Comp. Att. 168. Hern ubi supra.*

It is waste to suffer a Wall of the Sea to be in decay, so as by the flowing and re-flowing of the Sea the Meadow or Marsh is surrounded, whereby the same becomes unprofitable; but if it be suddenly by the rage and violence of the Sea occasioned by some Tempest or the like, without any default of the Tenant, this is no waste punishable, *Idem ibid. & Brit. 168. b. 6 El. in Griffins Case. See Abr. Moors Rep. 29. pl. 365. 6 El. ubi supra, F.N.B. 59.m.*

If the Tenant repair not the Banks or Walls of Rivers or other Waters, whereby his Ground is surrounded, and becomes rushy and unprofitable, this is waste, *Co. ubi supra, 29 H.8. Dyer 33. 22 H.6.4. 10 H.7.5.a. Kitch. 241.b. Abr. Moors Rep. Griffins Case.*

To suffer Pasture-ground to be surrounded with Water, so that it becomes rushy and nothing worth, or Arable Land to be surrounded, so that nothing remains but tough Clay, this is waste, *Kitchin ibid. 20 H.6.1.*

If the Tenant convert Arable Land into Wood, or *e converso*, or Meadow into Arable it is waste, for it doth not only change the course of his Husbandry, but the proof of his Evidence, *Co. 1 Inst. 53.b. 29 H.8. Dyer 37. Hob.*

*Hob. Rep. 234. Vide Robin 241. b. 10 H. 7.
5. c. 44 E. 3. 44. Ch. Compl. Att. 168.*

If Tenant for years make a Hop-yard in the Land it is waste, *Hutt. 103.*

To suffer Arable Land to lie fresh, so that it is full of Thorns, is no waste, 2 *H. 6. 11. F. N. B. 59. n.*

If a Man lease his Lands in which are Mines of Coals, or the like, without mentioning the Mines in the Lease, the Lessee for such Mines as are open at the time of the Lease made may dig lawfully, and take the Profits thereof; but he may not dig for any new ones, it is waste, *Co. 1 Inst. 34. b. 17 E. 3. 7. 9 H. 6. 66. F. N. B. 149. and c. 59. n. vide Hill. 15. Jur. in the Lord Darcy and Askwiths Case, Hob. Rep. 234. Heres Law of Convey. 54, 55.*

If there be open Mines, and the Owner make a Lease of the Land with the Mines therein, this shall extend to the open Mines only, and not any hidden Mines: but if there be no open Mines, and the Lease is made of the Land, together with all Mines therein, in this case the Tenant may dig for them, and enjoy the Benefit thereof, otherwise Words should be void, *Ca. ubi supra, vide Senders Case, 41 Elin Co. B. 105 lib. f. 12. Heres Law of Convey. 54, 55.*

But

01 But such a Lessee cannot cut down Timber for the use of such Mines; if he do, an Action of Waste may be brought against him, *Hob. 234.*

12 If a Lease be made to one of Lands to occupy the same after the best way he can, or to make his best Profit of them, yet this shall be intended only to be after such manner as is according to Right and Law; for in this case the Lessee may not plow up Meadow, or pull down Houses, &c. for if he do he shall be punished in waste, *17 E. 3. Tit. 101. Kitchen 248. a. Latchers Rep. 137.*

13 If the Lessee make the Villains or Tenants at Will poor, where they were rich when he came in, whereby they depart from their Farms, this is Exile and punishable, *Ca. 1 Inst. 53. b.*

C H A P. XII.

Who are punishable in Waste, and for what Waste, &c.

Waste in Latin is called *Vastum* a *Vastum*, from wasting and depopulating, *Ca. 1 Inst. 52. b.*

L

There

These are two kinds of waste: that is to say, voluntary or actual waste, and permissive waste. *Idem* 53. *Max. 33.*

An Action of Waste lieth against Tenant by the Courtise, Tenant for life, for years, or half a year, Tenant in Dower, or Guardian in Chivalry, by him that hath an Estate immediate of Inheritance, for waste or destruction in Houses, Gardens, Woods, Trees, Lands, Meadows, &c. or in Exile of Men, to the disherison of him in the Reversion or Remainder, and they shall lose the place wasted, and treble Damages, *Novi Max. 33.* Co. 1. *Inst. 53. a.* and Co. 2. *Inst. 302. Pl. Com. 467. b.* 68. *a.* *Phillips Pr. of Law 32.* *vide* *Bray. Chas. 4.* and *Stat. Glouc. ch. 5.* *Raff. waste 1. 4. 5.* and *Wing. Abr. Stat. 551. 552. 4 H. 9. 11. Kitchen 338. a.* Co. 2. *Inst. 302.*

It doth not lie against Guardian in Socage, but an Action of Account or Trespass, Co. 1. *Inst. 54. a.* *Ferrers Adog. Chas. 26. b.*

Waste lieth not against Tenant by Elegit, Statute-Merchant or the Staple, but an Action of Account after the Debt and Damages levied, *Novi Maxims 33.* *F. N. B. 59. c.* 16 E. 3. *Tit. waste 100. 2 E. 3. waste 1.*

Neither doth it lie against Tenant at Will; but if such Tenant voluntarily pull down the Houses, or cut down Timber-trees, &c. in this

this case the Lord may have his Action of Trover against him, *Quare et contra*, &c. but for perverting waste the Lord hath no remedy against him, Co. 1 Inst. 57. a. 21. H. 6. 38. 48. E. 3. 15. 21. H. 6. 38. 10 E. 4. 8. 22 E. 4. 5. 21. H. 6. 43. *Kitchin* 237. and *Walgrave and Semerfield* 25. *Mick* 29 and 30. *Ed. Goldsch. Rep* 72. p. 27. and *usque* 201. v. Either waste or encroachment will lie against Tenant in Mortgage, for he hath a Feoffment conditional, *Novi Adamini ubi supra*.

There are five several Writts of waste; two at the Common Law, for waste done by Tenant in Dower or the Guardian; and three by the Statute Law, for waste done by Tenant for life, for years; and Tenant by the Courtise; Co. 1 Inst. 34. and *usque* 201.

If two or more Jointtenants or Tenants in common be of a House of Habitation, and one of them will not repair the House, the other in that case may have Writ *De reparatione facienda*; Co. 1 Inst. 200. A. Reg. 163. F.N.B. 127. and Co. 1 Inst. 32. A.

If the Lessor covenant to repair the House, and doth not, in this case the Lessee may cut timber growing upon the Ground and repair it, though he be not compellable thereto; and shall not be punished in waste for cutting the Wood, 22 H. 8. 17. Co. 1 Inst. 34. b. vide *Hornes Law of Convey.* 54. *Critica Juris ingeniosa* 292. L 2. Or

Or if the Lessee covenants to repair and cut down Timber for Reparation, no Action of waste lieth against him, 30 Dyer 198. *Mort 292* 1. 2. 3. still further enlarged on

If a Man make a Lease of an House and Lands, without Impeachment of waste for the House, yet may the Lessee notwithstanding repair the House with Timber growing upon the Ground, though he may utterly waste the House if he will. *Ca. nisi supra*, vide *Critica Jura ingeniosa* 291.

No Person shall have an Action of Waste, unless he hath the immediate Estate of Inheritance, but sometime another shall join with him for Coverture, as if a Reversion be granted to two, and the Heirs of the one, they two shall join in an Action of waste, *Ca. Dist. 53. b. F.N.B. 39. § R. 2. waste 47. 37 H. 3. 14.*

And in like sort the surviving Copartener and the Tenant by the Courtroll shall join in an Action of Waste. *Idem ibidem*

If the Estate tail determine, hanging the Action of Waste, and the Plaintiff become Tenant in Tail after possibility of Issue extinct, the Action of Waste hangs, *Ca. nisi supra*, 2 H. 4. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Make Tenant in waste shall be the Reversioner, the Heir shall not have an Action of waste for the waste done in the life

of the Tenant in waste, *Ca. nisi supra*, 2 H. 4. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Ch. 13. *Land Lord and Tenant.* 237

of the Ancestor, 2 H. 4. *Co. libi supra*, *Novi Max.* 33.

Nor a Bishop, Master of an Hospital, Parson, &c. in the time of the Predecessor, *Co. libi supra*.

If Lessee for years commit waste and die, no Action of Waste lieth against his Executors or Administrators for waste done before their time, *Idem ibid.* 10 E. 4. 1. 49 E. 3. 25. waste 115. 2 Mar. 117. 8 E. 2. waste 110. Co. 2 Inst. 302.

If two Coparceners be of a Reversion, and one of them dies, the Aunt and Niece, shall join in an Action of Waste, *Idem ibid.*

If Lands be given to two, and the Heirs of one of them, he that hath the Fee shall not have an Action of Waste upon the Statute of Glouc. for that they are Joint-tenants; but his Heir shall have an Action of Waste against Tenant for life, Co. 1 Inst. 53. b. and 200. b. 24 E. 3. 27. 50 E. 3. 3. 8 H. 6. 13. Co. 2 Inst. on Stat. Glouc. 5.

If Lessee for life commit waste, and after surrender his Estate and the Lessor accepts it, now the Lessee is discharged of the waste, F. N. B. 36. b. 14 H. 8. 11. *Kitchini* 244. a. b.

If a Stranger make waste upon the Land which one holdeth for life or years, the Termor shall be punished for it, and left to take his remedy over, *Kitch.* *ibid.* 5 H. 4. 3. 3 H. 6. 17. b.

L 3

But

But if the Lessor himself make waste, the Tenant shall not suffer for that waste, *Kitch. ubi supra*, 5 H. 4. 3.

If the Tenant make waste before his Assentment, he shall not be liable to an Action for it, *Idem ibid.* 48 E. 3. 15. 24 H. 6. 7.

If the Lessor covenant to deliver Timber out of the same Land to repair the House let, and will not, and for lack thereof the Lessee will not repair it, but suffers the House to fall: in this case he is punishable for such waste: But if the Timber be to be taken out of other Lands, and is not delivered, then the Tenant is excusable if he suffer the House to fall, and no Action of Waste lies against him, 44 E. 3. 21. *Kitch. ubi supra*, *Idem ibid.*

Now, After the waste done, there is a special regard to be had to the continuance of the Reversion in the same Estate that it was at the time of the waste done; for if after the waste he grant it over, though he take back the whole Estate again, yet is the waste punishable: and so it is if he grant the Reversion to the use of himself and his Wife, and of his Heirs, yet the waste is punishable, and so of the like; because the Estate of the Reversion continues not, but is altered, and consequently the Action of waste for waste done before (which consisteth in privacy) is gone, Ch. 1. *Inst.* 33. 5.

A Prohibition of waste doth lie against Tenant by the Courtelle, Tenant in Dower, and Guardian in Chivalry by the Common Law, but not against Tenant for life or years, because they came in by the Lessors own Act, and he might have provided that no waste should be done, *Bract lib. 4. f. 315, 316. Brit. 168. Dr. and Stud. 2. c. 1. 12 H. 4. 3. 10 H. 3. waste 142. 4 H. 3. waste 140. Co. ubi supra.*

Tenant by the Courtelle or in Dower can hold of none but the Heir and his Heir by descent; and therefore if they grant over their Estate, and the Grantee doth waste, yet the Action must be brought against themselves for the waste done, and against the Assignees or Grantees, *Novi Max. 33. Co. ubi supra; F. N. B. 36. a. f. and see Co. 3 lib. in Walkers Case, and 9 lib. in Beaumonts Case, Regist. 72. vide Browley 1 part 239. Co. 2 Inst. 301.*

But if the Heir either before the Assignment had granted, or after the Assignment doth grant the Reversion over, in both these cases the Grantee must bring the Action of waste against the Assignee, for now the privity is destroyed, *Co. ubi supra.*

In all other cases the Action of waste must be brought against the Parties that commit the waste, (for it is in nature of a Trespass) unless it be in case of a Ward; for there if

the Guardian doth waste and assign over, the Action lieth against the Assignee, *Co. 1 Inst.* 54. a. 27 E. 4. 81. 26 E. 5. waste 10. Co. 2 *Inst.* 302.

A Guardian shall not be punished for waste done by a Stranger, *Co. ubi supra*, 12 H. 4. 3. 3 E. 3. waste 146. *Flata lib.* 1. c. 11.

But Tenant by the Courtesie, in Dower, for Life, Years, &c. shall be punished for waste done by a Stranger, and are left to take their remedy over against the Stranger as aforesaid, *Idem ibid.* F. N. B. 59. a. and 60. g. and n.

If waste be made by strange Enemies or sudden Tempest, the Tenuor is dispunishable for such waste, See before c. 11. g. 127. F. N. B. 59. lib. *Kitchin* 244. b. Co. 2 *Inst.* 303.

If Land be left to a Feme Sole, and she take Husband, who commits waste and die, she shall be punished for this waste, F. N. B. 36. b. 3 E. 3. Tit. 20. *Kitchin ubi supra*, Co. *ubi supra*.

But if the Lease were made to the Husband and Wife, and she commits waste and dies, in this case he shall not be punished for such waste, unless he agree to the Estate, *Kitchin ibid.* *Finch lib.* 1. c. 3. p. 26. Co. 2. *Inst.* 303.

If there be two Joint-tenants of a Ward, and one of them commit waste, both shall answer

Ch. 12. *Land-Lord and Tenant.* 241
answer for it, Co. 1 Inst. 54. a. 33 E. 3. waste 6.
Co. 2 Inst. 305.

An Infant and Baron and Feme shall be
punished for waste done by a Stranger, Co.
ibid. vide 15 H. 3. waste 16.

If a Feme Tenant for life take Husband,
and the Husband doth waste, and the Wife
dieth; in this case he is not punishable for
such waste: But if a Feme be possessed of a
Term of years, and take Husband who com-
mits waste, and the Wife dies, here he shall
be liable to an Action of waste for the waste
by him committed, because the Law giveth
the Term to him, Co. *ibid.* vide *Clifton Case*,
35 E. 1. Co. 5 l. 1. f. 73. 49 E. 3. 25. 46 E.
waste Statute, 10 H. 6. 11, 12 vide *Brown-
low 1 part*, 239. Co. 2 Inst. 301.

If Tenant for life grant over his Estate
upon condition, and the Grantee doth waste,
and the Grantor re-enteth for the condition
broken, the Action of waste shall be brought
against the Grantee, and the place wasted re-
covered, Co. *ubi supra*, 30 E. 3. 16.

If a Lease be made to a Villain, and waste
is done, and the Lord enteth; in this case
the Lord shall not be punished for waste
done before entry, but for waste after he
shall, Co. *ibid.* 48 E. 3. 19.

An Occupant shall be punished for waste,
and so if an Estate be made to A. and his

Heirs during the life of B. and A. dies, his Heir shall be punished in waste, *Co. ibid.* and *vide* *Case lib. 7. 27. Le Dean and Chap. de Warcest. Case, and lib. 10. f. 9. b. Horns Law of Cowsy. 53.*

If a Lease be made to A. for life, the remainder to B. for life; and the remainder to C. in fee; in this case if A. make waste, no Action lieth against him during the life of B. but if B. die, then an Action of waste lies against A. for the waste done in the life of B. because it was *ad exhereditamentum* of him in remainder in fee, and now the impediment (which was the mean Estate for life) is taken away, *Co. 1 Inst. 54. a. 50 E. 3. 3. 4 E. 3. 18. Per E. 619. F. N. B. 52. c. and 59 H. 3. 3 E. 3. waste 144. 21 E. 3. Ruse 118. 10 E. 4. 2. Repell. 74. Paget and Curtes Case vouched in *Co. 2 lib. in Bingham Case 92. and Co. 5 lib. 76. Paget Case there, 33 E. in C. B. Abr. Moore Rep. 60. 61. Co. 2 Inst. 301.**

And when it is said in some Books, that he in remainder or reversion in fee shall not have an Action of waste, it is to be intended during the continuance of the mean remainder for life. Again, where it is said in some other Books, that an Action of waste doth lie, it is meant after the death of him in remainder for life, and not otherwise, there-

therefore *Nota. Vide Paget's Case ubi supra*
in Co. 5 lib. *Herns Law of Convey.* 53.

If a Lease for life be made, the remainder
for years, the remainder in fee; here an
Action of waste lies presently against the Te-
nant for life during the Term in remainder,
for this mean Term for years is no imped-
iment, *Finch lib. 1. c. 3. p. 29. Co. 1 Inst. 54.*
vide Herns Law of Convey. 50, 53. *vide*
Brownlows 1 part Inst. 301.

But if a Man make a Lease for life or
years, and after granteth the reversion for
years, the Lessor shall have no Action of waste
during the years; for he himself hath
granted away the reversion in respect where-
of he is to maintain his Action: But it is
otherwise if he had made a Lease in rever-
sion, which had been but a future Interest,
for there an Action of waste lieth during the
Term, and the Term shall be saved in that
case, *Co. ubi supra*; and *vide 4 E. 3. 18.*

If an Action of waste be brought, and
pending the Writ the Term end, yet the
Writ shall not abate; for although the
Plaintiff cannot recover the place wasted,
yet he shall recover the treble damages, 11 H.
6. 8. *F. N. B.* 60. 14 *H. 8. 12. Kitchin* 246. *Co. 2 Inst.* 304.

And so where one that holds for Term
of anothers life make waste, and afterwards

Castm

Cestui que vie dies; here the Lessor shall recover damages, although he cannot recover the place wasted, *Co. 1 Inst. 285. a. 11 H. 6. 43. 2 E. 4. 50.*

If Tenant for life or years or their Assigns make a Grant over, and yet take the Profits; then an Action of waste lieth against him by him in reversion or remainder by the Statute of 11 H. 6. c. 5. *F. N. B. 63. Kitchen ubi supra, 36 El. in C. B. Bontres Case, Co. 5. lib. 77. Co. 2 Inst. 302.*

If waste be done in one Corner of a Wood, that only will be recovered; but if it be *parfim*, that is here and there in the Wood, then the whole Wood shall be recovered, or as much wherein the waste *parfim* is done, *Co. 1 Inst. 54. a. and 2 Inst. 304. 4 E. 6. waste 112. 18 H. 8. 1. 15 H. 7. 11. 8 E. 3. waste 112. 4 E. 2. 32. 15 E. 3. waste 106. See Temp. E. 1. waste 123 and 134. Kitchen 246. l. Registrum Practicum 343. Heri Law of Country 34.*

And so in Houses; so many Rooms shall be recovered wherein there is waste done; but if the waste be done *parfim*, through all, then all shall be recovered, *Co. 1 Inst. 54. a. 8 E. 2. waste 112. Co. 2 Inst. 303. 304.*

If a Man make a Lease for life, and by Deed grant that if any waste be done, that it shall be redressed by Neighbours, and not by

by Suit or Plea, yet notwithstanding an Action of waste doth lie, for the place wasted cannot be recovered without Plea.

If a Man make waste in cutting Trees which grow in Hedge-rows which inclose Pasture, nothing shall be recovered but *Locum vastatum*, that is, the Circuit of the Roots, and not the whole Pasture: But if the Trees grew *sparsim*, scatteringly about the Pasture, then the whole Pasture is forfeited if they be cut, 4 E. 6. waste 136. per *Bramley*, and *Pasch. 1650. in B.R. per Just. Termin.* vide *Regist. Pract. 343. Co. 2 Inst. 304. 18 H. 8. 1. Reg. Pract. ubi supra.*

It is a good Plea in Bar to a Writ of waste, to say that the House fell by sudden Tempest, although the Termor did covenant to repair it: but it is no Plea in a Writ of Covenant, 43 E. 6. 6. waste, *Kitchin 247. a.*

But if the House be only uncovered by sudden Tempest the Lessee ought to repair it, 12 H. 4. 6.

It is a good Plea in waste to say, that at the time of the Lease made the House was ruinous, and the Timber putrified and rotten, so that it fell: for if any of the principal Timber were rotten, it is no waste, though he did covenant to repair it, See before Ch. 3. *Kitchin ubi supra, 49 E. 3. 7. waste.*

It

It is also a good Plea to say that the Plaintiff hath entred upon the Land, before which Entry no waste was made; or that he surrendered, and the Plaintiff did accept, before which time no waste was made, 8 H. 6. 27. waste, 8 H. 5. 8. waste, *mes vics* Co. 1 Inst. 285. a.

It is no Plea to say, that at the day of the Writ purchased the House was sufficiently repaired; but he must say after the waste committed, and before the Writ purchased, it was sufficiently repaired; and this is a good Plea, 19 H. 6. 66. *vide* Co. 1 Inst. 283. a. and *Kitchin* 247. b. Co. 3 Inst. 307.

If the Lessee doth waste, and after surrenders, and the Lessor agrees, yet notwithstanding the Lessor may have an Action of waste, and recover the treble damages, 19 H. 6. 66. 14 H. 6. 14. 11 R. 3. waste 99. Co. 1 Inst. 285. a.

If an Action of waste be brought by Baron and Feme in Remainder in special Tail; and pending the Writ the Wife dieth without Issue, now the Writ in this Case shall abate, because every kind of Action of waste must be *ad exheredationem*, Co. ubi supra, 2 H. 6. 46. E. 1. *Brus* 807.

If there be two Joint-tenants of a Wood, Turbarie, Piscary, or the like, and one of them doth waste against the will of the other:

here

here the other may have an Action of waste against him, and he that hath Election before Judgment either to take his part in certainty by the Sheriff and the Oath of 12 Men, &c. or that he grant that from thenceforth he shall not do waste, but according to his proportion, &c. and if he make choice of a certain place, then the place wasted shall be assigned to him. Co. 1 Inst. 200. b. *West. 2. ch. 22. vide Raskal waste 6. Wingates Abr. Stat. 552. Ferrers Magna Charta 71. b. Co. 1 Inst.*

And this doth extend as well to Tenants in Common and Joint-tenants for life, as to an Estate of Inheritance: But if one Tenant in Common or Joint-tenant out of a Dove-house destroy the whole Flight of Doves, no Action of waste doth lie in that case upon the Statute, but the other may have an Action of Trespass against him that destroyed them, *vi & armis Columbarie Pl. fragil. & 200 Columbarie per. 40 s. interfecti. &c. Co. 1 Inst. 200. a. b. 47 E. 3. 22. b. 1 H. 5. 1 and 3.*

If a Lease be made to hold to one without any Impediment of waste, then the Lessee may cut down Trees, and convert them to his own use, but if the words be, to hold without Impediment for any Action of waste, then in this case if the Lessee cut down

down Trees, the Lessor shall have them, for the discharge extends but to the Action, *Ca. 1. Inst. 220. a. vide Ca. Reg. lib. 2. f. 23. ubi 9. f. 9. lib. 12. f. 82.*

A Lease for years is made reserving to the Lessor the Wood and Underwood, the Lessee cuts down the Trees, no Action of waste lies against him, but an Action of Trespass, *Dyer 19. 5. Ca. 12.*

If Lessor for life grant a Rent charge, and after doth waste, and the Lessor recover an Action of waste, he shall hold the Land charged during the life of the Tenant for life; but if the Rent were granted after the waste done, the Lessor shall then avoid the Grant made by the Lessor for life, *Ca. 1. Inst. 233. a. and 234. a.*

A Parson, Vicar, Arch-deacon, Prebend, &c. may have an Action of waste, and the Writ shall be said, *ad recuperationem Ecclesie, &c. infra B. ex. Prebenda infra B. Ca. 1. Inst. 341. a. 10 H. 7. c. EN. B. 55. c. and 57. c.*

If Tenant in Fee release to his Tenant for life all his Right, yet he shall have an Action of waste, *Ca. 1. Inst. 345. a. 41 E. 3. 23 EN. B. 60. a. 41 E. 3. ubi 81. a. 42 E. 3. 13.*

And if Tenant in Fee make a Lease for his own life, yet he shall have an Action of waste, *Idem infra.*

But

But if Tenant for life be, the Remainder to another in Tail, and he in the Remainder release to the Tenant for life all his Right and State in the Land, in this case he cannot afterwards have an Action of waste, Co. 1 Inst. 345. b. 43 Aff. pl. 13. 41 E. 3. waste 83. 11 H. 4. 67. 13 H. 7. 10. Pl. Com. 482.

If the Lessor bring an Action of waste against his Lessee, the Lessee cannot plead generally *Ricus in le Reversion*, but he must shew how, and by what means the Reversion is devested out of him, Co. 1 Inst. 356. a. 46 E. 3. 20. 8 H. 6. 13. 30 H. 6. 7.

But if the Grantee of a Reversion bring an Action of waste, the Lessee may plead generally, that he hath nothing in the Reversion, Co. *ubi supra*.

If a Bishop make a Lease for life or years and dies, and the Lessee, the See being void, doth waste; in this case the Successor shall have an Action of waste, Co. 1 Inst. 356.

And so if Lessee for life be disseised and waste is done, and the Lessor re-enters; here an Action of waste lieth against him, Co. *ubi supra*.

If Lessor and Lessee for years, &c. join in the cutting down of 20 Oaks, &c. growing upon the Lands leased, the Lessor shall not punish the Lessee for the same, Mich. 18 H. 8. 5. Perk. 102.

If

If the Lessee before his Term begin, enter into the Lands let to him, and do an act which amounteth unto waste, the Lessor shall not have an Action of waste for the same.

Note shall have Judgment to recover in an Action of waste, where the waste comes but to *20 s.* or such a petty Sum; *De minimis non curat Lex, Finch lib. 1. c. 3. p. 29.*

If waste be done upon Lands let for term of years or life, by one against whom the Lessee can have no remedy in Law for committing the same waste; the Lessee in such case is not punishable for the same by the Lessor, except there be a special Covenant in the Lease, that he shall not commit nor suffer waste to be done, *Ch. 2. Inst. 303. Regis. Pract. 343.*

Note well what hath been here said concerning Guardians in Chivalry and their Wards, is but only to shew what the Law was formerly in those cases: for now the Statute of *12 Car. 2. c. 24.* Wardship (that former undoing of many Gentlemen) *Primer Seisin*, and all *Ouster le mains*, &c. are quite taken away, and all hold now in Fee and common Socage; and every Father, whether he be at age of 21 years or under, may by Deed executed in his life-time, or by his last Will and Testament in Writing, in the presence of two or more credible Witnesses

nesses delivered, dispose of his Children under the age of 21 years, and not married at the time of his death, for and during such time as they shall remain under the age of 21 years, or any lesser time, to the Custody and Tution of any Person or Persons in Possession or Remainder (Popish Recusants excepted) and such disposition of such Child or Children since the 24 of Febr. 1645. or hereafter to be made shall be good against all and every Person and Persons claiming such Child or Children, as Guardian in Socage, or otherwise, &c.

CHAP. XIII.

An Abridgment of the Statutes of 43 Eliz. and 15 Car. 2. about the unlawful cutting, stealing or spoiling of Wood, &c. necessary for all Gentlemen to know.

IF any shall be convicted by his own Confession, or by the Testimony of one Witness upon Oath, before one Justice of Peace, or Head-Officer, to have unlawfully cut or taken away any Grain growing, robbed any Orchard or Garden, digged up or taken any Fruit Trees, broken any Hedges, Fences, or other Fences, cut or spoiled any Woods or
Under

Underwoods standing and growing, or the like, or to have been accessory therunto, he shall within such time as the Justice or Head-Officer shall appoint, pay for the first Offence to the Party grieved so much as the Justice or Head-Officer shall set down; and in case the Party offending be not able to pay it, or do it not according to order, then the Offender is by them or either of them (respectively) to be committed to the Constable, or other Officer of the Place where the Offence was committed, or the Party apprehended to be whipped, and so for every Offence afterwards, and proved as aforesaid, the Offender is to have the like punishment of whipping.

If the Constable refuse or neglect to whip the Offender, any such Justice of Peace or Head-Officer may commit him to Prison without Bail, till he whip or cause to be whipped, the Party offending as is above declared.

No Justice may execute this Statute for Offences done to himself, unless he be associated with one or more Justices of Peace whom the Offence doth not concern, Stat. 43 *El. c. 7.*

Now the Statute of 13 *Car. 2.* is an additional Act to this, as follows.

That every Constable, Headborough, or other Person in every County, City, Town, or

Corporate, or other place where they shall be Officers or Inhabitants, shall have power to apprehend, or cause to be apprehended such as they suspect for having or carrying, or any ways conveying any Burthen or Bundles of any kind of Wood, Underwood, Poles or Young Trees, Bark or Rust of Trees, or any Gates, Billes, Posts, Pales, Rails or Hedgwood, or any other such Goods.

If any Person be suspected to have any such Woods, Underwoods, &c. any Officer, by Warrant under the Hand and Seal of one Justice, may enter by virtue thereof into the Houses, Out-houses, Yards, Gardens or other places belonging to such Persons, and wherever they find any such, they may apprehend those Persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. and if he in whose custody such Wood, &c. is found cannot give a good account, which may be satisfactory to the Justice, how he came by the same, with the consent of the Owner, or do not within a convenient time set down by the Justice, produce the Party of whom he bought the same Wood, Underwood, &c. or some other credible witness to depose upon Oath such Sale of the said Wood, Underwood, &c. (which the Justice may administer)

ther:) that then the said Person shall be deemed convict of the said Offence of cutting and spoiling of the same Woods, Meadows, &c. within the meaning of the before recited Statute of the 43 of Eliz. and be liable to the punishment therein contained: and to pay over and above down presently, to the use of the Overseers of the Poor of the place where the Offence is committed, for the first Offence, such a Sum, not exceeding 10 s. as the Justice shall appoint. And if the Offender shall not perform the Justices Order herein to the Owner, and also to the Overseers of the Poor, then the Justice is to commit him to the House of Correction, for so long (not exceeding one month) as he shall think meet, or to be whipt by the Constable or other Officer, as the Justice shall think most expedient. And if such Person shall again offend in the like kind, and be convicted as before, then he shall be sent to the House of Correction for one month, and be there held to hard Labour. And if he do offend the third time, and be convicted as before, then he shall be taken, adjudged and deemed as an incorrigible Rogue.

It may buy any Barbers or Wounders, (as before named) which may be justly considered to have been taken or otherwise taken by any Justice, Mayor, Bailiff, or Head Officer within

within his Jurisdiction, may upon Complaint to him made, examine the matter upon Oath, which they may administer: and if he find that the same was bought of one that may be justly suspected to have stoln or unlawfully come by the same, he may then order the Party that bought the same, to pay treble the value to the Party from whom they were stoln or unlawfully come by; and in default of present payment thereof, issue out his Warrant to levy the same by Distress and Sale of the Offenders Goods, rendering the overplus to the Owner of such Goods; and for lack of such distress to commit the Party to the Gaol, there to remain without Bail for the space of one month at his own Charges.

Note, That no Man is to be punished by this Law, that hath been punished by a former Law for the same Offence: nor is any Man to be questioned for any Offence in this Statute, unless he be questioned for the same within six weeks after the Offence is committed.

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A

TABLE

OF THE

Chief Matters

Contained in this

BOOK.

Acceptance

W hat it is	Page 49
Where it determines the Lesson of	
the Lesson	80
Where it shall confirm the Lesson, where not	
Where it is good by an Infant	103
M	Ac-

Acquittance,

- Where payments must be made without Acquittance, and where not 96
Where it discharges all Arrearages 100

Apportionment,

- Where Rent shall be apportioned, and where not 72, 97, 115

Assignee,

- Who so called, and how many kinds thereof 83

Assignment,

- Where Notice is necessary upon an Assignment, and to what purpose 84

Attornment,

- What it is 131
Where not good to give possession 53
Attornment upon a void Grant will not make it good 59
What things requisite to make a good Attornment 132, 137
What

The Table

*What words amount to an Attornment, 128,
133, 136, 137
When to be made 133, 134, 140
Where necessary 134, 135
By whom to be made 135, 136, 137, 138
Where not necessary 138, 139, 140*

Avoidance,

Where one may avoid his Debt 165, 166

Ayowry,

*What it is, and how to be made, and in what
cause 218, 219, 220, 221
How many kinds thereof 221*

Baron and Feme.

*What Acts of the Husband bind the Wife
58, 76, 133, 135, 139
What Acts of the Wife, during Coverture,
shall bind her afterwards 82, 83*

M a

Com

Commencement.

When a Lease shall commence 142, 143, 146

Confirmation,

What it is, and how many kinds 110, 111

Good by an Infant when 111

For what time a Lease for years may be confirmed, and when it shall extend to the whole Term, and when not 111, 112

What a good Confirmation, what not 112,

113, 114, 160

Condition.

What words make a Condition 38

How many kinds thereof *ibid.*

Condition in Deed when 39

Condition in Law when *ibid.*

Condition precedent when *ibid.*

Condition subsequent when 40

Who may take advantage of a Condition

40, 46, 50

Condition to avoid an Estate, shall be taken

strictly 41, 42

Where a Condition determined to one Party

shall be determined to all the rest 41

Con-

The Table.

Condition to repair upon notice to whom it
must be given 42, 43

Condition to have Fee, where it is good, and
where not 43, 44, 45

What Acts done by the Lessee shall be avoid-
ed by the Lessor, upon entry for breach of
Condition 49

An Estate granted on condition to get the
good will of another, in what time it must
be done Ibid.

What Acts amount to the Breach of a Con-
dition, and what not 50, 51

Continuance.

Where a Lease shall continue, and how
long 117, 145, 147, 148, 149, 150, 151

Copyhold.

Who may grant it 160

Corn sown.

Where the Lessee and his Executors shall
have it, where not 168, 169, 170, 171
172, 173, 174, 175

The Table.

Covenant.

What it is, and how many kinds thereof	25
When broken by the Lessor	26
When it shall make a good Lease	ibid.
Where it shall not bind the Assignee	27
Where it binds the Lessee against all Accidents	27, 32
Where it binds the Assignee though not named	27, 28, 29
Where the Lessors Assignee shall have Covenant against the Lessee	29
Where Covenant lies against two Lessors upon a joint Covenant for the breach of one of them	30
Where it lies against the Lessors Heirs, and where not	ibid.
Where Covenant lies, and where not	30, 31
	32, 33, 34, 35, 36, 38, 39
What a Breach of Covenant, and what not	36
A Covenant Personal what	ibid.
Covenant for Hedgebont how expounded	37
Several persons bound in Covenant when the Seal of one broken off shall void all, where not	43, 44

Date

The Table.

Date.

<i>Where it shall be taken inclusive, and where exclusive</i>	141, 142
<i>Impossible Date when it commences</i>	142

Debt.

<i>Where it lies for Arrearages of Rent</i>	41
<i>In what County the Action of Debt must be laid</i>	86, 98

Demand.

<i>Where requisite</i>	93, 118, 124, 125, 126
<i>At what place, and what time</i>	118, 119, 125, 126
<i>Where not requisite</i>	125

Determination.

<i>What Act of the Lord determines a Copy- hold or Lease at will</i>	159, 161, 164
--	---------------

The Table.

Devise.

<i>What passeth by a Devise of all Lands and Tenements</i>	52
<i>What by the Devise of the Profits of Lands</i>	63
<i>A Devise of the whole Term to one, the Remainder to another, if the first alien and dies, the other is without remedy</i>	67

Distress.

<i>Of what things is betaken, of what not,</i>	180, 181, 182, 183, 184, 185, 186
<i>What a sufficient Distress, what not</i>	188
<i>The derivation of the word</i>	189
<i>How to be used</i>	186, 187, 200
<i>If the Distress die in Pound or whose peril,</i>	184, 189, 190
<i>Second Distress, the first not being sufficient</i>	198
<i>Distresses must not be excessive</i>	191
<i>For what cause a Distress may be taken, and by whom, and where lawful, and where not</i>	193, 194, 195, 196, 197, 198, 199, 200
<i>An Abridgement of the new Statutes for Distresses</i>	183, 190, 191, 215

Ejections

The Table

Ejectione firme.

Where it lies by our joint Lessee against his
Companion 88

Entry.

Where lawful, where not 101, 119, 121, 123,
123, 126, 127, 165, 166

Lease made by an Heir before his Entry 145

Where requisite 185

Estoppel.

What case, and when removed 87

Estovers.

The derivation of the word 176

How many kinds 176

Where the Lessee may take them, where not
176, 178, 179

Exception.

What it is, and what words proper to make it
72

Where it shall be good, and where void 73

Exc-

The Table

Executors.

Where the Executors of the Husband shall have a Term which he had in right of his wife, and where not	59, 60, 153, 153
Where a Tenant may give away the Goods which she hath as Executrix to another Man without her Husbands consent	63
Where they shall be charged for Rent upon a Lease made to the Testator, and where not	83
Where they shall have a Term in Right of their Testator	6, 144
Where they shall have Rent after their Testators death or not	90
Where the Heir shall have the Rent and not the Executors	90, 95

Extinguishment.

What it is	115
Where Rent shall be extinguished	115, 116
Lease extinguished when	117
Copy hold extinguished when	118

Farm

The Table.

Farm.

<i>Who are restrained from taking Farms</i>	6
<i>Who are called Farmers</i>	11, 12
<i>The derivation of the word</i>	13
<i>How many Farms a Man may lawfully take</i>	167

Forfeiture.

<i>Where Lessee for years shall forfeit his Term</i>	152
<i>Where a Copy-holder shall forfeit his Estate, where not</i>	161, 162, 163, 164

Grant.

<i>Where Grant imports Warranty, and where a Covenant</i>	52
<i>What a Grant, what not</i>	52, 53, 54, 57, 58, 59, 61, 62, 63, 64
<i>Grant of Rent-charge, where the Person of the Grantor shall be charged, where not</i>	59

Habeas Corpus

The Table.

Habendum.

What it is.	143
Where good, where void.	144

Indenture.

Why so called.	88.
If the Lessee lose his Indenture, yet he shall not lose his Term.	167

Infant.

When a Lease made by him shall bind at full Age.	151
--	-----

Lease.

The derivation thereof.	2
In every Lease must be Lessor and Lessee.	ibid.
How many kinds of Leases.	ibid.
Lease Passeth the inconveniences thereof.	3
What Leases a Person, Year, &c. may make.	9, 10
Lease for years must be certain.	5
	If

The Table

If it be for 500 or 1000 years it is but a Charter	6, 156
Who may make Leases for what Term they please	47
Who are restrained by Statute	8, 9, 10, 11
What words make a Lease	11
Leases are of three natures	141
If sealed by the Lessor only it is good enough	13
Lease for years cannot be entailed	109
If any variance be, it shall be taken according to the Lessors Deed	113
Where a Lease shall arise and revive again	141
Lease of an House, cum pertinentiis, what pages	87

License.

License to the Lessee to alien, how far ex- tendable	47
---	----

Limitation.

What it is, and what words most proper to make it	125, 129
What a good Limitation, what not	129, 134

The Table.

Livery and Seisin.

Where not requisite	21, 22, 130
Where void	131

Mortmain.

When a Lease is said to be Mortmain	6
-------------------------------------	---

No unjust years.

Where it lies	199
---------------	-----

Novel Discrepan.

Where it lies	Ibid.
---------------	-------

Obligation.

Forfeited for non-payment of Rent when	32, 93, 93, 94
For for not repairing	33, 42
Forfeited for non-payment of Money how	51
Obligation with several days of payment, not to be sued till the last day	95, 96
	Oc.

The Table

Occupant.

<i>Who so called</i>	54
<i>In what Cases Occupancy shall be</i>	55
<i>How to prevent it</i>	ibid.
<i>How altered by Statute</i>	55, 56

Parco fractu.

<i>Where it lies, and by whom to be brought</i>	189, 190, 197
---	---------------

Payment.

<i>When and how to be made</i>	89, 90, 91, 92, 115, 116, 117
<i>Tithes payable by the Lessee of the Glebe to the Parson</i>	95

Possio Comitatus.

<i>When and where to be taken</i>	310
-----------------------------------	-----

Property.

<i>How many kinds</i>	213, 214
<i>How to be claimed, and by whom</i>	214
<i>Vis de Proprietate probanda</i>	ibid.
	Proviso

The Table

Præfatio.

How it shall be taken in several places of the
Lease 66, 67

Pone.

Where it is 217

Remainder.

What it is, and what things are required to
make it good 103, 104, 105, 106, 107,
108, 109, 110, 115

The thing wherof a Remainder is created
must be in Effe before 107

It must not commence upon Repugnancy 108

Common Remainder 109, 110

It must commence in possession when the par-
ticular Effe ends 110

Of

Release.

When a good Bar is Covenant, and when not 112, 113

Where it shall discharge the Bar, and when 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

What

The Tables

What is discharged by a Release of all Demands 48

Where a Rent-charge shall be apportioned, and where extinguished by the release of the Grantee 53

Where a Release made to Tenant for years is void 60

Where a Lease and Release amounts to a Feoffment 126

Rent.

Where it may be reserved by Parol 316

Where one may distrain for Rent, as he has an Action of Debt, and when not 37

Where an Infant shall be chargeable with the payment of Rent 38

Rent reserved at several days, where an Action lies till all the days be past, and where one may sue every Rent 93, 96

Where Rent shall cease and revive again 90

Whether Heir or Executor shall have it 316

What things may be reserved to be paid in lieu of Rent, and out of what 98

Infranchisement of Rent how it is avoided 199

Re-

The Table

Replevin.

The derivation thereof	205
How it is sued out, and by whom and where	205, 206, 208, 212
Replevin of several Men distrained, they may join in Replevin	212
What things first to be named in Replevin	212
It must be certain in setting both number and kinds	ibid.
Where Replevin lies though the Replevin be come back to the Owner	ibid.

Return Turpin's.

Where it shall be awarded	207, 208, 209
---------------------------	---------------

Return.

The derivation of the word	201
Where it lies	194, 195, 201, 202, 203, 204
And what remedy by the Statute	190

Re-

The Table.

Recordare.

Where it lies

111

Reservation.

How it shall be taken

68, 71

What words are a good reservation

68, 69

Where a reservation by the Lessor is void

69

Lessor for years assigns all his Term, reser-

ving Rent, that is void

70

Reservation to the Lessor void when he

assigns it after his death

70

To him and his Assigns

71

Lease of Tithes reserving Rent

3

Reservation by two Coparceners, how it shall

be taken

72

By Tenant in Tail where good

91

By two joint-Tenants where it shall survive

to one, and where to both

92

Second Deliverance.

When to be sued out

101, 102

91

Suzumuri.

Where Kite shall be suspended 73, 100, 115

Suzumuri.

*Whom many kind: thereof, and who would
amount to a Surrender* 75, 74, 75

*Where there is run, Laffery, a Surrender, to
one, shall come to both* 76, 82

*What all shall amount to a Surrender, who
not* 77, 78, 81

What a good Surrender who not 78, 79, 80
81, 82

Tennis.

Where to be made 92, 95, 110, 130

Who what time to be made 91, 94, 118, 119

Where one required 125

Tennis.

Who are Tennis in Five-finger 113

The derivation of the word 114

Tennis in special Tail who 114

In general Tail who 115

The derivation of the word 114

After

By the Charter who	
In Dower who	
How many kinds of Dower	
Tenant for life who	
For years who	
At will who	
At sufferance who	
At Copy who	
And Tenant by the Feoff who	
Jointenants who	
Tenants in Common who	

Tree.

Where the Lessee shall have them after they are severed from the Ground, and where not	177, 178
Where one may take a Tree given by Tenant in Tail, where not	178

Trespas.

Where it lieth, where not	195, 198, 220
---------------------------	---------------

Waste.

Its derivation	252
Waste of Houses what	252, 253